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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

THE SUPREME COURT'S CALL TO TREAT LYNCHING AS A DISTINCT OFFENSE: A LEGAL STUDY

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INTRODUCTION

Lynching is a type of violence where a group of people kills a presumed guilty person without a trial, often after tormenting and seriously damaging his or her body. A lynch refers to a self-contained court that sentences someone without due process of the law.²

Mob is an English word which means **unrestrained or uncontrolled crowd** and **Lynching** is an Americo - Latin word, which means **awarding the death sentence without any legal proceeding**. As defined by the Cambridge Dictionary, a group of people who want to attack someone who they think has committed a serious crime is called Mob Lynching.³ Both these terms are derived from the name of Charles Lynch (1736–96), a Virginia planter and justice of the peace who, during the American Revolution, headed an irregular court formed to punish loyalists.⁴

In recent years, many such incidents in India have been recorded, especially in Rajasthan, western Uttar Pradesh, Madhya Pradesh, Bihar etc. The subject of mob lynching isn't uncommon, and may be a questionable one too. Mob lynching cases are for reasons of pure hatred which got just another name. There are very less or no cases with any proof of the allegation charged. This subject may be an unending one within the purview of the country India. But, despite of numerous lynching cases the country has not been ready to declare this malaise a criminal offense.⁵

In **TS Poonawalla v. UOI 2018**⁶, the Supreme Court of India addressed that lynching is needed to be treated as a separate offence, urging the government to take immediate legislative action

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² DRISHTI IAS, <https://www.drishitiias.com/to-the-points/paper1/secularism>

³ <https://dictionary.cambridge.org/dictionary/english/lynch-mob>

⁴ <https://www.britannica.com/topic/lynching>

⁵ Rathore, G. (2021). *Mob lynching: A desecration of the rule of law*. Centre for Academic Legal Research / Journal of Applicable Law & Jurisprudence, 1(1).

⁶ (2018) 9 SCC 501

to address the matter. This intervention is an actual response to increasing instances of mob violence and failure of existing legal provisions to adequately address the matter. By acknowledging the need for a separate offense, the court emphasized the severity of lynching and the need for a legal framework that could deal with the complexities surrounding these acts of violence.

REASONS FOR MOB LYNCHING IN INDIA

Religious biasness: despite India's secular constitution, communal and religious tensions lead to violence based on caste, class, and religious differences. Instances like the 2006 Khelanj Massacre highlights how mob violence can be fueled by such biases.

Witch hunting: the superstition driven of witch hunting, where women are accused of witchcraft and lynched, remains prevalent in parts of India. Over 2100 women were killed as accused of being a witch.

Rise of Cow Vigilantism: the growing trend of cow vigilantism, where individuals are lynched over allegations of cow slaughter or beef consumption, has been fueled by rumour and the increasing influence of cow protection laws often frive lynching cases.

Illiteracy: lack of education leads to a tendency to believe in rumours without critical thinking, often causing violence against innocents, such as attacks on beggars suspected of child kidnapping.

Unemployment: high unemployment levels lead to frustration, contributing to social instability and mob violence as individuals channels their anger into violent acts.

Spread of Rumors via Social Media: misinformation spread through social media has led to several lynchings. False news and rumours, especially about crimes like child kidnapping, contribute significantly to mob violence.

Lack of Specific Laws: the absence of laws that specifically address mob lynching means that such crimes are prosecuted under Indian Penal Code provisions, which do not adequately reflect the severity of mob violence as a societal offense.

Lengthy Judicial Procedures: the slow and convoluted judicial process delays justice, which in turn encourages people to take the law into their own hands, as they believe immediate justice is required.

Delay in Justice: Delays in legal proceedings can result in frustration, with citizens resorting to mob violence in an attempt to bring swift justice, as seen in high profile cases like the Delhi Rape case,

HISTORICAL CONTEXT AND LEGAL FRAMEWORK OF LYNCING IN INDIA

Mob lynching is not a new phenomenon in India, during 1857 revolt mobs attacked British civilians, in 1947 partition mobs attacked families, individuals in villages, cities and even burned properties of people of a different religion. Lastly, mob violence during communal conflagrations, such as during Sikhs (1984), Christians Kandamahal riots (2009), Muslims, Bombay riots (1992), Gujarat (2002), Muzaffarnagar (2013), and Baksa riots (2015), (Bakshi and Nagarajan, 2017) and Palghar incident (2020).⁷

In India, the phenomenon of mob lynching has its unique characteristics influenced by diverse societal factors. The vast diversity in the country, encompassing religion, caste, gender, race, language, and place of origin, sometimes results in conflicts. In the Indian context, lynching targets not only those accused of crimes like murder or rape but also those perceived by mobs as deviants. Witch-hunting serves as a glaring example of lynching in India. Additionally, traditional bodies like Khap Panchayats have perpetrated violence against interfaith relationships. Presently, cow vigilantism has taken a forefront in lynching incidents, but it's just one of many triggers. The Indian Penal Code (IPC) doesn't specifically define mob lynching, making official data elusive. Yet, many incidents gain attention through media reports. A significant portion of these lynchings are linked to rumors of child kidnapping, followed by cow vigilantism, interfaith relationships, theft, among other reasons. It's crucial to acknowledge that numerous incidents likely remain unreported, suggesting a disturbingly high prevalence in society.⁸

⁷https://www.researchgate.net/publication/351090133_Mob_Lynching_a_Criminal_Injustice_Toward_Humanity

⁸ <https://www.researchambition.com/RA/index.php/ra/article/view/190>

In India, mob lynching is not defined as a distinct criminal offense under existing laws. Instead, it was addressed through general provisions in the Indian Penal Code (IPC)⁹, such as Section 302 (murder)¹⁰, Section 307 (attempt to murder)¹¹, Section 338 (grievous hurt)¹², and Section 147 (rioting)¹³. However, these provisions fail to adequately address the unique nature of mob lynching, which involves collective group actions, social media influence, and often communal motives. This legal gap has led to growing calls for recognizing mob lynching as a standalone offense, with a specific legal framework. Although **Section 103(2) of the Bhartiya Nyaya Sanhita**¹⁴ marks a step forward by criminalizing mob lynching, the lack of a clear and comprehensive definition leaves significant gaps. To effectively combat mob lynching, it is crucial not only to define the crime explicitly but also to establish a robust legal and preventive framework. While punishment is an important part of tackling mob lynching, prevention and vigilant monitoring are key to preventing such incidents. Past efforts, such as the guidelines in the **Tehseen Poonawala case**¹⁵ and **previous Bills** (*anti lynching bills of U.P., W.B., Manipur, Jharkhand, Rajasthan, Maharashtra*), offered more nuanced approaches. Given the limitations of a national penal code, specialized state-level laws, like those in **MaSuKA**¹⁶, may offer a more effective strategy by addressing mob lynching in a preventive, punitive, and remedial manner¹⁷.

SUPREME COURT GUIDELINES TO PREVENT LYNCHING IN TS

POONAWALLA VS UOI 2018ⁱ

1. The state governments shall designate a senior police officer in each district for taking measures to prevent incidents of mob violence and lynching.

⁹ **BHARTIYA NYAYA SANHITA, 2023**

¹⁰Section **101** Bharatiya Nyaya Sanhita, 2023

¹¹ Section **109** Bharatiya Nyaya Sanhita, 2023

¹² Section **116** Bharatiya Nyaya Sanhita, 2023

¹³ Section **191** Bharatiya Nyaya Sanhita, 2023

¹⁴ **Punishment of murder** - "When a **group of five or more** persons acting **in concert** commits **murder** on the **ground of race, caste or community, sex, place of birth, language, personal belief** or any other ground each member of such group shall be punished with death or with imprisonment for life or imprisonment for a term which shall not be less than seven years, and shall also be liable to fine."

¹⁵ **Tehseen S. Poonawalla vs Union Of India on 17 July, 2018, AIR 2018 SUPREME COURT 3354,**

¹⁶ 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>

¹⁷ Agrawal, A., & Shrivastava, S. (2024, April 22). Criminalisation of mob lynching under the Bhartiya Nyaya (Second) Sanhita 2023. *NUALS Law Journal*. <https://nualslawjournal.com/2024/04/22/criminalisation-of-mob-lynching-under-the-bhartiya-nyaya-second-sanhita-2023/>

2. The state governments shall immediately identify districts, sub-divisions and villages where instances of lynching and mob violence have been reported in the recent past.
3. The nodal officers shall bring to the notice of the DGP any inter-district co-ordination issues for devising a strategy to tackle lynching and mob violence related issues.
4. It shall be the duty of every police officer to cause a mob to disperse, which, in his opinion, has a tendency to cause violence in the disguise of vigilantism or otherwise.
5. Central and the state governments should broadcast on radio and television and other media platforms including the official websites that lynching and mob violence shall invite serious consequence.
6. Curb and stop the dissemination of irresponsible and explosive messages, videos and other material on various social media platforms.
7. Register FIR under relevant provisions of law against persons who disseminate such messages.
8. Ensure that there is no further harassment of the family members of the victims. State governments shall prepare a lynching/mob violence victim compensation scheme.
9. Cases of lynching and mob violence shall be specifically tried by designated court/fast track courts earmarked for that purpose in each district.
10. The trial shall preferably be concluded within six months. To set a stern example in cases of mob violence and lynching, the trial court must ordinarily award maximum sentence upon conviction of the accused person.
11. If it is found that a police officer or an officer of the district administration has failed to fulfil his duty, it will be considered as an act of deliberate negligence.

CONCLUSION

Mob lynching presents a significant legal and societal challenges that hinders the effective prosecution of offenders and the protection of victims. The current criminal codes, while providing some avenues for addressing violent crimes, are ill- equipped to handle the unique nature of mob violence. Key challenges include the lack of a clear legal definition of mob lynching, difficulty in proving motivation and premeditation, and the role of digital incitement through social media. Additionally, the absence of targeted victim compensation, delays in justice, and inefficiencies in the judicial system exacerbate the problem.

The lack of a distinct legal framework to address mob lynching creates ambiguity in how laws are applied and leaves room for inconsistencies in justice. The spontaneous nature of mob violence, driven by rumours and misinformation, makes it particularly challenging to establish motive and gather reliable evidence. Moreover, while social media plays a significant role in inciting violence, current laws do not sufficiently address the digital landscape's role in perpetuating lynchings.

To address these issues, comprehensive legal reforms are required, including a clear definition of mob lynching in the criminal code, provisions targeting digital incitement, and improved victim protection schemes. In addition, the establishment of specialized fast track courts, efficient investigations, and preventive measures such as public awareness campaigns can help reduce the prevalence of mob lynching and ensure timely justice. Only through these systematic changes can the legal system effectively confront mob violence and protect citizens from this grave societal menace.

ⁱ drishtiias.com/daily-news-analysis/make-lynching-a-separate-offence-sc-tells-parliament/print_manually