

LEGAL REGIME ON MOB LYNCHING: A COMPARATIVE ANALYSIS OF INDIAN AND AMERICAN SCENARIO

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“The majesty of law cannot be sullied simply because an individual or a group generate the attitude that they have been empowered by the principles set out in law to take its enforcement into their own hands and gradually become law unto themselves and punish the violator on their own assumption and in the manner in which they deem fit”.

- Dipak Misra, C.J. in *Tehseen S. Poonawalla v. Union of India*¹

“The strong arm of the law must be brought to bear upon lynchers in severe punishment, but this cannot and will not be done unless a healthy public sentiment demands and sustains such action”.

- Ida B. Wells²

INTRODUCTION

Society in every part of the world has witnessed the ugliest face of discrimination in the form of brutal killing by masses, be it on the basis of race or on the basis of religious sentiments³⁴. Even in the advanced societies of countries like the USA, it has been observed that from the late nineteenth century to the mid-twentieth century, thousands of Americans were lynched. Among the victims, about two-thirds of the victims were Black⁵.

Further, the widespread impact of social media messages has added fuel to the fire in the name of incidents like mob lynching in the name of cow vigilantism in democracy like

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¹ (2018) 9 SCC 501

² Ida B. Wells, “Southern Horrors: Lynch Law in All its Phases (1892)”, available at: https://www.digitalhistory.uh.edu/disp_textbook.cfm?smtid=3&psid=3614

³ The Economist, Cowboys and Indians, *The Economist* (Aug. 20, 2016), available at: <https://www.economist.com/asia/2016/08/20/cowboys-and-indians>

⁴ Manfred Berg & Simon Wendt, eds., *Globalizing Lynching History: Vigilantism and Extralegal Punishment from an International Perspective* (Palgrave Macmillan 2011), available at: <https://link.springer.com/book/10.1057/9781137001245>

⁵ Karlos K. Hill, *21st Century Lynchings?*, Cambridge Blog (Feb. 21, 2016), available at: <https://cambridgeblog.org/2016/02/21st-century-lynchings/>

India⁶.

Conceptually, lynching is associated with denial of due process of law. The process involves extra-legal public executions, which were illegally organized by members of a local community and not by a law enforcement agency⁷. As far as the purpose is concerned, historically, such executions had been organized to violently punish them on the allegation that they have committed a crime or breached a social norm.

The past couple of years have been crucial in the legislative history of both India and USA, as they witnessed enactment of legislative provisions to combat such extra-judicial killings⁸.

DEFINITION

The origin of the term “lynch” is uncertain, but it likely emerged during the American Revolution. The term originates from “Lynch Law,” which referred to a method of punishment carried out without a trial. It is usually linked to Charles Lynch and William Lynch from Virginia during the 1780s⁹. Historically, the definition of the word “lynching” suffered from lack of consensus amongst the anti-lynching reformers.

Therefore, the role of anti-lynching organizations such as Tuskegee Institute, the National Association for the Advancement of Colored People (NAACP), the International Labor Defense (ILD) and the Association of Southern Women for the Prevention of Lynching (ASWPL) had been crucial to derive a suitable definition¹⁰.

NAACP has defined lynching as the public execution of an individual without trial or legal process. While these acts were typically carried out by violent mobs, law enforcement officers occasionally took part, often justifying their involvement as a form of justice¹¹.

It has been considered as violation of the human rights and fundamental rights as guaranteed under article 21 of Indian constitution.

⁶ DNA India, *Mob lynching: 7 instances which shook India*, DNA INDIA (Jan. 23, 2019), available at: <https://www.dnaindia.com/india/report-mob-lynching-7-instances-which-shook-india-2639925>

⁷ *Supra* note 5

⁸ Provisions under the newly enacted Bhartiya Nyay Samhita, 2023 and the Emmett Till Antilynching Act of USA enacted in 2022

⁹ *Lynch*, Online Etymology Dictionary, available at: <https://www.etymonline.com/search?q=lynch>.

¹⁰ Christopher Waldrep, *War of Words: The Controversy over the Definition of Lynching, 1899-1940*, 66 *J. of Southern History* 75 (2000), available at: <https://www.jstor.org/stable/2587438?seq=1>

¹¹ NAACP, *History of Lynching in America*, available at: <https://naacp.org/find-resources/history-explained/history-lynching-america>

LAGEL PROVISIONS

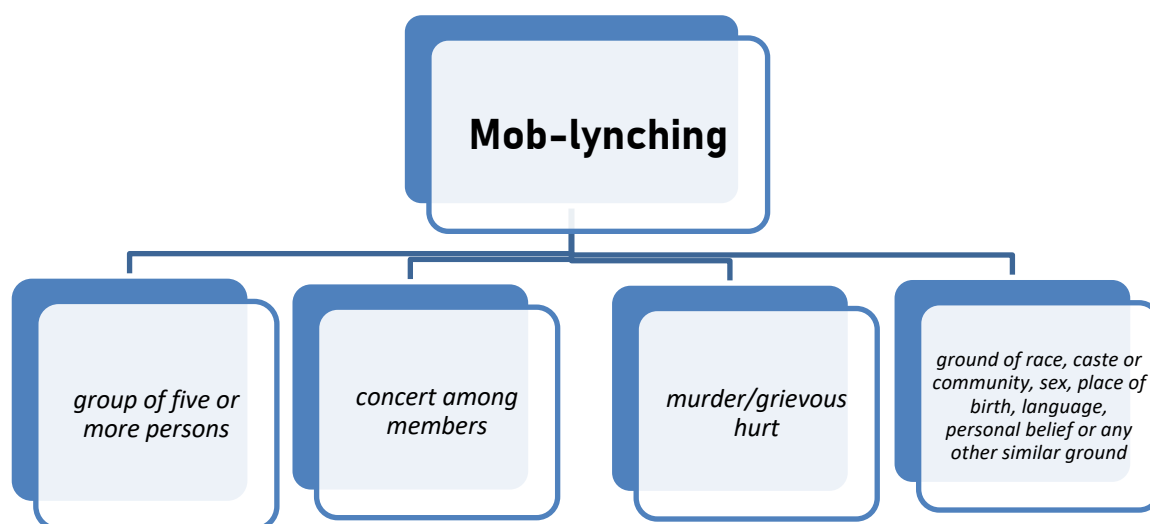
Prior to the enactment of the Bharatiya Nyaya Sanhita (BNS), 2023, the Indian Penal Code had no specific provision for providing definition and punishment for the offence of mob-lynching. It was made punishable as the offence of murder punishable under section 302. For the first time, it was recognized as an offence and made punishable in sections 103(2) and 117(4) of the Bharatiya Nyaya Sanhita (BNS), 2023.

Section 103(2) lays down that:

“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 similar ground each member of such group shall be punished with death or with imprisonment for life, and shall also be liable to fine”.

Similarly, section 117(4) lays down that:

“When a group of five or more persons acting in concert, causes grievous hurt to a person on the ground of his race, caste or community, sex, place of birth, language, personal belief or any other similar ground, each member of such group shall be guilty of the offence of causing grievous hurt, and shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine”



Thus, following are the essential ingredients of offence of mob-lynching

1. There must be a group of five or more persons.
2. There must be concert amongst members.
3. Such concert must be in order to commit murder or grievous hurt.
4. Grounds for such act must be either race, caste or community, sex, place of birth, language, personal belief or any other similar ground.

When the murder is caused as a result of such a concert, each member of such group is liable for punishment of death or imprisonment for life and is also liable to fine. But when grievous hurt is caused as a result of it, such members are liable to imprisonment extending up to seven years and they are also liable to fine.

Further, it is notable that the ground of religion has not been included in the definition.

SUPREME COURT GUIDELINES

Even before the enactment of the BNS, the hon'ble Supreme Court has time and again lamented over the practice of extra-judicial killings by the assembly of persons forming 'Khap panchayats', who take law into their hands¹².

Following a series of lynchings in Dadri, Jharkhand, and other incidents linked to cow protection groups, social activists filed writ petitions under Article 32 of the Constitution against the relevant states. In response, the Supreme Court, in 2018, issued a comprehensive set of guidelines outlining preventive, remedial, and punitive measures to tackle the issue of mob lynching in the case of *Tehseen S. Poonawalla v. Union of India*¹³.

To address the need for prompt and decisive action by both the state and Central governments against mob attackers committing violence in public, the bench, consisting of Justices Dipak Misra, D.Y. Chandrachud, and Ajay Manikrao Khanwilkar, reviewed the observations made in earlier Supreme Court rulings, including *Shakti Vahini v. Union of India*¹⁴ and the US case *Ex parte Riggins*¹⁵. In the landmark *Shakti Vahini* case, the Hon'ble Court ruled that 'Khap Panchayats' or similar assemblies cannot assume the role of law enforcers. The Court

¹² *Shakti Vahini v. Union of India*, AIR 2018 SC 1601

¹³ *Supra* note 1

¹⁴ AIR 2018 SC 1601

¹⁵ 18 (C.C.N.D. Ala., 1904) 134 Fed. 404

emphasized that such groups have no legal authority to act as law enforcement bodies, as no law grants them this power.

The Hon'ble Court recognized the urgent need to tackle the rising issue of mob lynching, a problem that has also emerged in countries like the USA. Consequently, it found it necessary to reference the US case *Ex parte Riggins*¹⁶, which involved the lynching of a Negro citizen who had been incarcerated on a murder charge.

Regarding the liabilities of the police and administrative authorities, the Court took into consideration the decision of the apex Court in *Arumugam Servai v. State of Tamil Nadu*¹⁷.

The Hon'ble court came up with a slew of following guidelines, which may be classified into preventive, remedial and punitive measures:

- a) **Preventive Measures.** The major preventive measures, which involve actions on the part of the state and Central governments, police authorities etc., laid down were as follows:
 - i. **Appointment of Nodal Officer:** The State Government was directed to appoint a Nodal Officer in each district, who should be no lower than the rank of Superintendent of Police. This officer was to be assisted by personnel holding the rank of Deputy Superintendent of Police (DSP). The function of such Officer will be to take measures for prevention of incidents of mob violence and lynching.
 - ii. **Constitution of a special task force:** The Nodal Officers have been empowered to constitute a special task force. The purpose of such force will be gathering intelligence on individuals who are prone to committing such offenses or engaging in the spread of hate speech, inflammatory remarks, and false information.
 - iii. **Identification of affected regions.** State Governments have been entrusted with the duty to identify regions, where cases of lynching and mob violence have been documented in the past five years.

¹⁶ *Ibid*

¹⁷ (2011) 6 SCC 405

- iv. ***Holding regular meetings with the local intelligence units.*** The Nodal Officer has been tasked with holding regular meetings, along with all Station House Officers of the district, at least once a month, with the local intelligence units in the district. The goal is to detect any signs of vigilantism, mob violence, or lynching and take proactive steps to eliminate any hostile environment targeting specific communities or castes involved in such incidents.
- v. ***Other measures:***
- The Director General of Police is bound to instruct the Superintendents of Police to enhance police patrols in sensitive areas, considering previous incidents and gathered intelligence.
 - The Central and State Governments shall be responsible for preventing the spread of reckless and inflammatory messages on social media platforms.
 - FIRs shall be filed under Section 153A of the IPC and/or other applicable legal provisions against individuals who circulate such messages.
 - The Central Government shall provide the necessary directions and advisories to the State Governments.
 - The Secretary of the Home Department in the relevant States shall issue instructions to Nodal Officers in each district, ensuring that Police Station In-charges in sensitive areas remain vigilant if any instance of mob violence occurs within their jurisdiction.
 - Every police officer shall have the duty to disperse any mob that, in their judgment, may lead to violence or lynching, whether under the guise of vigilantism or otherwise, using their authority under Section 129 of the CrPC.
 - The Director General of Police or the Secretary of the Home Department in the relevant states will conduct regular review meetings (at least quarterly) with all Nodal Officers and heads of State Police Intelligence. Nodal Officers should report any coordination issues between districts to the DGP to formulate strategies to address mob violence and lynching at the State level.

- b) **Remedial Measures.** Remedial measures come into play when the preventive measures fail. In other words, when the act of mob lynching has taken place, the authorities take recourse to remedial measures. The major remedial measures are:
- i. ***FIR without any undue delay:*** It shall be the duty of the jurisdictional police station to lodge an FIR under the relevant provisions of IPC and/or other provisions of law, when the local police come to know about the occurrence of the acts of mob-lynching.
 - ii. ***Duty to intimate to the Nodal Officer:*** The Station House Officer was made duty-bound to intimate the Nodal Officer in order to prevent further harassment of the family members of the victim.
 - iii. ***Monitoring of the Investigation:*** The Nodal Officer has been made duty-bound to personally monitor investigation for an effective investigation.
 - iv. ***Compensation Scheme for Victims:*** The state governments were made duty-bound to create a compensation scheme for lynching/mob violence victims covered under section 357A of CrPC within one month from the date of the judgment. Consideration for the compensation shall include the extent of physical injury, emotional harm, loss of income including missed employment and educational opportunities, and costs related to legal and medical expenses.
 - v. ***Interim relief:*** The Court also ordered that interim relief be provided to the victim or the next of kin of the deceased within thirty days of the mob violence or lynching incident.
 - vi. ***Trial:*** Regarding the trial of mob violence/lynching, the Court laid down following guidelines:
 - Cases of lynching and mob violence shall be exclusively handled by designated courts or Fast Track Courts.
 - Trial shall be conducted on a day-to-day basis.
 - The trial must be completed within six months from the date of taking notice of the case.
 - Trial courts are bound to take measures necessary for protection and for concealing the identity and address of the witness.

- The victim or the deceased's next of kin shall be given an opportunity to be heard during the trial regarding applications like bail, discharge, release, and parole filed by the accused.
 - Free legal aid shall be ensured for the victim or the next of kin of the deceased in cases of mob violence and lynching.
 - The victim has the right to hire any lawyer of their choice from those listed in the legal aid panel under the Legal Services Authorities Act, 1987.
- c) **Punitive Measures.** These measures have the objective of punishing the police and district administration, in case of their failure to prevent the acts of mob violence and lynching. These measures are:
- i. ***Failure to be treated as act of deliberate negligence or misconduct:*** The Court held that failure on part of the Police officer or officer district administration to comply with the aforesaid directions in order to prevent or investigate or facilitate expeditious trial of any crime of mob violence and lynching will be considered as an act of deliberate negligence or misconduct.
 - ii. ***Disciplinary action:*** The Court recommended that disciplinary action be taken against the officials who, despite having prior knowledge of the incident, failed to prevent it, or those who, after the incident occurred, did not take immediate action to arrest the perpetrators and initiate criminal proceedings. The Court relied upon the judgment of *Arumugam Servai v. State of Tamil Nadu*¹⁸.

LEGAL REGIME IN USA

Regarding history of lynching in USA, it has been observed by Walter Howard that lynchings were “a routine, everyday sort of villainy”, largely confined to the South and predominantly directed at Black individuals rather than White ones in 1930s¹⁹. Further, it has been observed that between 1882 and 1968, roughly 4,742 people were lynched, of which 73%, of the

¹⁸ (2011) 6 SCC 405

¹⁹ Walter Howard, *Lynchings: Extralegal Violence in Florida During the 1930s* (University Press of Florida 2001), available at: <https://www.google.co.in/books/edition/Lynchings/YirwhyDdoNYC?hl=en>.

victims were Black²⁰.

The ugly phase of lynching was witnessed during the Reconstruction, phase of the 12 years following the Civil War, failed to offer freedom and opportunities to formerly enslaved Black people. Instead, white resentment toward Black social, political, and economic progress sparked violent racial terror, including mass lynchings, which continued into the 20th century²¹. The white press often deliberately referred to these deadly attacks as “riots,” while those responsible faced no repercussions. The widespread violence created an atmosphere of fear and intimidation in Black communities²².

During Reconstruction, at least 34 mass lynchings took place, with 12 major massacres occurring in the South between 1872 and 1876, many aimed at politically active African Americans²³.

The US Supreme Court in *Ex Parte Riggins*²⁴ lamented over the menace of mob lynching prevalent in the USA. The facts involved the lynching of a Negro citizen who had been incarcerated on a murder charge. The Court referred to the following relevant observations made by Thomas Goode Jones, J. in the same²⁵:

“When a private individual takes a person charged with crime from the custody of the state authorities to prevent the state from affording him due process of law, and puts him to death to punish the crime and to prevent the enjoyment of such right, it is violent usurpation and exercise, in the particular case, of the very function which the Constitution of the United States itself, under this clause [the 14th Amendment] directs the state to perform in the interest of the citizen. Such lawlessness differs from ordinary kidnapping and murder, in that dominant intent and actual result is usurpation and exercise by private individuals of the sovereign functions of administering justice and punishing crime, in order to defeat the performance of duties required of the state by the supreme law of the land...”

²⁰ Robert L. Zangrando, *The NAACP Crusade Against Lynching, 1909-1950* (Temple Univ. Press 1980), https://www.google.co.in/books/edition/The_NAACP_Crusade_Against_Lynching_1909/XQ80AAAAIAAJ?hl=en.

²¹ Equal Justice Initiative, “History of Racial Injustice: Mass Lynchings”, 2023, available at: <https://eji.org/news/history-racial-injustice-mass-lynchings/>.

²² *Ibid*

²³ *Ibid*

²⁴ *Supra* note 15

²⁵ *Supra* note 15

The 1909 decision of *United States v. Shipp*²⁶ was one in which the U.S. Supreme Court addressed the issue of the legality of a mob's actions in lynching a Black man named Ed Johnson in Chattanooga, Tennessee, in 1906. However, the trial was under murder statute.

The fight to curb this menace in USA is not of recent origin. There have been many efforts in that direction for over a century. Some of the noteworthy efforts were as follows:

1. ***The Dyer Anti-Lynching Bill (1918)***. The Bill was introduced to combat the widespread racial violence and lack of accountability for lynchings, particularly in the South. Though, the House of Representatives passed the Bill, it was ultimately blocked in the Senate, primarily due to strong opposition from Southern lawmakers who supported lynching as a method of racial control²⁷.
2. ***The Costigan-Wagner Bill (1934)***. The proposed legislation sought to enable federal prosecution of individuals involved in lynch mobs, including public officials and law enforcement officers who neglected to protect victims under their custody. The bill was designed to dismantle mob rule and end the vigilante violence that specifically targeted Black Americans²⁸.
3. ***The Justice for Victims of Lynching Act (2018)***. The bill defines lynching as any act intended to "willfully cause bodily injury to another person" based on their actual or perceived race, color, religion, national origin, gender, sexual orientation, gender identity, or disability. This legislation aims to address lynching as a targeted act of violence driven by hate and to ensure stronger legal consequences²⁹.

After failure of these efforts, in 2022, Emmett Till Antilynching Act was enacted³⁰. The act revises section 249(a) of title 18 of the United States Code to include punishments for "lynching" and "other conspiracies". The provisions are as follows:

²⁶ 214 U.S. 386 (1909).

²⁷ NAACP, "Dyer Anti-Lynching Bill", available at: <https://naacp.org/find-resources/history-explained/legislative-milestones/dyer-anti-lynching-bill>.

²⁸ *Ibid*

²⁹ S.3178 - Justice for Victims of Lynching Act of 2018, 115th Congress (2018) available at: <https://www.congress.gov/115/bills/s3178/BILLS-115s3178es.pdf>

³⁰ Public Law 117-107 - Justice for Victims of Lynching Act of 2022, 117th Congress (2022) available at: <https://www.govinfo.gov/content/pkg/PLAW-117publ107/html/PLAW-117publ107.htm>.

“(5) Lynching- Whoever conspires to commit any offense under paragraph (1), (2), or (3) shall, if death or serious bodily injury (as defined in section 2246 of this title) results from the offense, be imprisoned for not more than 30 years, fined in accordance with this title, or both”.

“(6) Other conspiracies- Whoever conspires to commit any offense under paragraph (1), (2), or (3) shall, if death or serious bodily injury (as defined in section 2246 of this title) results from the offense, or if the offense includes kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill, be imprisoned for not more than 30 years, fined in accordance with this title, or both”.

CONCLUSION

To a great extent, the fight against mob-lynching has been given great emphasis by the judicial pronouncements in both countries. However, despite the well-formulated guidelines laid down by the Hon’ble apex court, the central and state governments have to show their will-power to designate a special court for the trial of mob-lynching.