



INCREASING MENACE OF MOB- LYNCHING: THE LEGISLATIVE MEASURES

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Abstract:

Increase in cases of mob lynching sparked the protest named “Not in My Name” in 2017 majorly in Delhi. Not only did the number of mob lynching cases were on rise but also the incidences were so gruesome that it became the issue of national and international concern. Legislative steps were also taken to deal with this menace by introducing MASUKA bill in 2017. Few states like Manipur, West Bengal, Rajasthan, and Jharkhand also took initiative and bills for protection from lynching were introduced in these states. The article critically examines the central bill MASUKA to find the shortcomings in the draft. Moreover, the state bill also needs to be referred. Even though, the state enactments are similar to the central bill in majority of aspects still the disparities will help in determining the aspects like penalties and procedural steps differently. The article majorly will be divided into three parts the first part will critically examine the central draft bill. The second part will discuss the disparities in the state bills. The third part will focus on the shortcomings and proposed changes in the central bill which will be suggesting solutions for the shortcomings.

Keywords: Mob Lynching, MASUKA bill, state enactment, disparities, shortcoming

INTRODUCTION :

Rule of law is of paramount importance in any country to maintain peace, security and uphold the democracy and political stability. In India, the rule of law bears the same importance by which no person can be punished unless the act is an offence under law. Since the government, authorities and every citizen in India are obliged by this rule of law; the acts which are not offence according to law and still menace to society cannot be perceived as offences. One such menace is ‘Mob Lynching’. Mob lynching in its simplest context mean offence; which is usually the offence of grievous hurt or murder; committed by mob without any legal process. ‘Mob’ in general parlance is group of people or mass or crowd. Dictionary meaning of mob further clarifies that mob is uncontrolled, violent group of people or mass or crowd. Lynching is when the people take the law in their hands and with a strong belief that they are indeed doing justice commits the violence. Some of the reasons behind incidences of mob lynching in India are Difficulty in placing liability, Political

interest, Unethical media reporting, Communal hatred and prejudices amongst citizens, Poor implementation of existing laws, False information on social media, Rumours, Disobedience of crowd, Dereliction of duty by police, Illiteracy, Hate campaigns, Laws related to cow slaughter and cow vigilance, Absence of law in this area.

The cases like Jharkhand (Chatra) lynching, Junaid Khan’s lynching, Mohammed Akhlaq’s lynching and lynching of Tabrez Ansari were a proof the increasing number of incidences of mob lynching and horrifying episodes of this menace therefore it was seriously taken into consideration in the case of Tehseen Poonawala v. Union of India and Ors (2018) 9 SCC 501 in which the Honourable Supreme Court has given guidelines to curb the offence of mob lynching and duty was imposed on the state government to make the anti-lynching laws, ensure efficient functioning in accordance to these laws and also to prepare an anti-lynching compensation scheme under the provisions of section 357A of Criminal Procedure Code, 1973. After which the

legislative measures by states gained momentum. Specifically in states of Manipur, Rajasthan, West Bengal, Jharkhand and Uttar Pradesh the attempt to make law for protection of mob lynching the bills were introduced. Prior to these attempts of state legislatures, in 2017 a central bill named Protection against Lynching Act drafted by NCAML (National Campaign against Mob Lynching) was introduced in the RajyaSabha.

Proposed Central Draft Legislation of 2017: An Overview

NCAML (National Campaign against Mob Lynching) is a committee consisting of eminent individuals like eminent criminal lawyer, senior lawyer at Supreme Court, social worker, educationist, activist, writer, professor of Jawaharlal Nehru University (JNU), media personality and bollywood actor. This committee drafted the Central Bill named Protection against Lynching Act popularly called as MaSuKa (ManavSurakshaKanoon) which was introduced as a private member's bill in RajyaSabha in 2017. Initially when the campaign for enactment of MaSuKa started nationwide protest "Not in My Name" started where people asserted that act of lynching should not be associated with their religious or social identities. As of January 2023 that is above five years from the time bill was introduced in RajyaSabha, Protection against Lynching Act 2017 is still pending. However, it is imperative to understand the provisions of this draft law. This legislation punishes lynching and abatement, aiding with same quantum of punishment. It includes other offences related to lynching like hindrance in legal process, spread of hostile materials, etc. Under this legislation punishment for lynching will depend on the injury caused and will extend from range of seven years to life imprisonment and fine which will extend from one lakh to five lakh rupees, Investigation to be done by police

officer not below the rank of Inspector, police officer in charge of police station will be vested with power under Section 129 of Code of Criminal Procedure, 1973 for controlling mob lynching and responsibility of controlling mob lynching cases is given to station house officer (SHO). The draft bill also provides rehabilitation for victim's family, compensation for the loss suffered by victim and victim's identity will be protected.

State Bills: Overview and Comparative analysis

Presently, there is Manipur Protection from Mob Violence Ordinance, 2018; Rajasthan Protection from Lynching Bill, 2019; West Bengal (Prevention of Lynching) Law, 2019 and Prevention of Mob Violence and Mob Lynching Act, 2021, draft Uttar Pradesh Combating of Mob Lynching Bill, 2019 Most of the provisions under state enactments are similar to Central Bill and the provisions under these five state legislations are also very similar in nature. Amongst these five state legislation; Manipur was the first state in India to take effective action to curb the menace of mob lynching and thus promulgated Manipur Protection from Mob Violence Ordinance, 2018. Till Manipur Protection from Mob Violence ordinance, 2018 there was no enactment for controlling mob lynching. However, the ordinance became null and void according to Article 213 of Constitution of India. The Manipur Protection from Mob Violence Bill, 2018 was a bill to replace without modification Manipur Protection from Mob Violence ordinance, 2018 but it was not enacted as an Act of state assembly within six weeks from reassembly of state legislature. Presently, the Governor has reserved for the bill for consideration of the President making the fate of this act uncertain. Under this legislation the definition of lynching is elaborative and includes many forms of hate crime, lynching and abatement, aiding are punished with same

quantum of punishment, The offence related to incitement done through explosive videos and messages will be registered under Section 153 A of Indian Penal Code, 1980 and punishment for lynching will depend on the injury caused and will extend from range of seven years to life imprisonment and fine which will extend from one lakh to five lakh rupees. It also includes other offences related to lynching like hindrance in legal process, spread of hostile materials, etc, appointment of nodal officers, duty of state officials to prevent any hostile environment against any group including social and economic boycott, requirement of prior permission of state government for registration of this offence and prescribed punishment of 1-3 years of imprisonment and fine upto 50,000 rupees for Police officials failing in duty to control mob lynching within their jurisdiction. This state enactment also impose duty on state to make victim rehabilitation scheme.

Then the Rajasthan state bill titled “Rajasthan Protection from Lynching Bill, 2019” was passed by the Vidhan Sabha on 5th August 2019 through voice vote amid strong dissent from opposition party and awaiting to be cleared by Union Home Ministry. This bill prescribe same quantum of punishment for lynching and abatement, aiding and punishment for lynching will depend on the injury caused and will extend from range of seven years to life imprisonment and fine which will extend from one lakh to five lakh rupees. It also includes other offences related to lynching like hindrance in legal process, spread of hostile materials, etc. Under this legislation state’s executive general of police will appoint reviewer general to keep check on cases of mob lynching and each region director of police who will be appointed as locale organizer will take measure to control lynching cases with the help of delegate administrator of police. It also provides compensation for victim under Rajasthan Compensation Scheme.

The third state to pass anti lynching law was West Bengal. This state enactment is titled “West Bengal (Prevention of Lynching) Law, 2019” which is awaited to be cleared by Union Home Ministry and few of the features of this law are that the lynching and abatement, aiding are punished with same quantum of punishment, it includes other offences related to lynching like hindrance in legal process, spread of hostile materials, etc., punishment for lynching will depend on the injury caused and will range from three years to life imprisonment and fine which will range from twenty five thousand to five lakh rupees, appointment of Nodal Officer and compensation to victims to be provided from state victim compensation scheme.

Also a draft law named ‘Uttar Pradesh Combating of Mob Lynching Bill, 2019,’ was submitted to Chief Minister Adityanath by the Uttar Pradesh State Law commission’s Chairperson Justice (retired) AdityaNath Mittal and few features of this draft law are that lynching and abatement, aiding are punished with same quantum of punishment, it includes other offences related to lynching like hindrance in legal process, spread of hostile materials, etc., punishment for lynching will depend on the injury caused and will extend from range of seven years, ten years and life imprisonment and fine which will extend from one lakh, three lakh and five lakh rupees and Dereliction of duty by police officer or district magistrate will result in imprisonment of one year, which may be extended to three years and fine up to Rs 5000.

Recently, Jharkhand assembly passed mob lynching act named ‘Prevention of Mob Violence and Mob Lynching Act, 2021’ by a voice vote and was sent to Governor for his assent. In March 2022 the Governor of Jharkhand Ramesh Bais sent the anti-lynching bill back to state government with suggestions regarding

definition of mob and regarding witness protection scheme which was mentioned in English version of the bill but was missing from Hindi version. Nevertheless, some of the features of this Act are that aid, abetment and attempt is included in the definition of mob lynching, punishment for lynching will depend on the injury caused and will range from three years to life imprisonment and fine which will range from one lakh to twenty- five lakh rupees and the punishment also includes attachment of property.

All these state legislations are similar in nature as in all the enactments the definitions of lynching and mob has been provided. The definition of victims is also included which is wider than the definition provided under Criminal Procedure Code, 1973 since the definition in the bills mentions about physical, mental, psychological or monetary harm and along with legal guardians and legal heirs relatives of the victim are also included within the definition. Aiding, abetting and attempting is included within the ambit of lynching under these bills. There are also provisions of free legal aid, compensation to victims, rehabilitation and reliefs etc. However, there are some differences between these state legislations like only the ordinance of Manipur and bill of Rajasthan and West Bengal provides for duties of nodal officer. There are disparities in punishment for specifically for other offences like dissemination of offensive material and enforcing a hostile environment in these bills. The ordinance of Manipur is the only draft which provides for punishment for damaging movable and immovable property, power of state government to impose collective fine and punishment for providing false information or failure to provide information. The provision punishing dereliction of duty by police officer which is present in almost all draft bills is missing in Rajasthan bill.

Protection against Lynching Act, 2017: The shortcomings

Under section 96 of the Jammu and Kashmir Reorganization Act, 2019 the cabinet had approved the order of making 37 central enactments applicable to the state of Jammu and Kashmir in 2020. Since the central bill named Protection against Lynching Act is draft of 2019 the draft central bill is applicable to whole of India except Jammu and Kashmir which should not be the case now and needs to be changed. The Protection against Lynching Act defines lynching and mob. According to Section 2(c) and (d) lynching means any act or series of acts of violence or aiding, abetting or attempting an act of violence, whether spontaneous or planned, by a mob on the grounds of religion, race, caste, sex, place of birth, language, dietary practices, sexual orientation, political affiliation, ethnicity or any other related grounds and “mob” means a group of two or more individuals, assembled with an intention of lynching. The definition of lynching is very restrictive because as discussed in this article there can be various reasons for mob lynching and the grounds for lynching may or may not be relating religion, race, caste, sex, place of birth, language, dietary practices, sexual orientation, political affiliation, ethnicity or any other related grounds. Early incidences of mob lynching in India were relating to witch hunting and now it is relating to child lifter and stealers as well. Therefore the definition provided in draft bill is not complete and sufficient as it does not cover other grounds for mob lynching. The Jharkhand bill named Prevention of Mob Violence and Mob Lynching Bill, 2021 was opposed by Bhartiya Janta Party (BJP) and raised several objection. One of the objection was regarding the definition of mob which was also considered by governor Ramesh Bias who sent the anti-lynching bill back to state government with suggestions regarding definition of mob. Governor Ramesh Bias rightly

pointed that the definition of mob, which means a group of two or more individual according to all the state enactments and central bill on protection from mob lynching, is not according to the general or law lexicon dictionary. The general meaning of mob is large number of people with intent to cause trouble or violence and the number of people constituting a mob has been given in law lexicon as well. Even if the number of people has to stated while definition of mob, the number two or more seems unreasonable and such definition may be susceptible to misuse in its practical usage. Further, section 3 of the draft central act Protection against Lynching Act specifies the duties of a police officer to prevent mob lynching and mentions about making all possible efforts to prevent mob lynching which in itself is vague as it does not provide specific ways to handle such mob. Mob coming together to hurt or injury or kill any person is a crime and police will act upon it even in absence of such provisions. Therefore, the fact that the violent group of people are coming together to commit a offence should be the focal point of the provisions and specific duties apart from what is already provided under criminal procedure code should be specified. These vague and open to different interpretation provisions are observed throughout chapter 3 and 4 of the draft act. The section 23 (3) of the act which mentions that the Superintendent of Police, or officer designated by him or her shall inform the victim in writing about the progress of investigations into the offence, whether or not the offender has been arrested, charge-sheeted, granted bail, charged, convicted or sentenced, and if a person has been charged with the offence, then the name of the suspected offender. This provision casts unnecessary duty on the police to keep victim updated regarding the reported incidence of mob lynching. The primary victims of mob lynching are usually the targeted individuals who in

majority of cases are either killed or they succumb to serious injuries inflicted on them. The secondary victims are usually the family members of the primary victim. In such cases there is need of rehabilitation and counseling. Therefore, section 27 of Protection against Lynching Act regarding relief camps seems unnecessary.

Taking into consideration these shortcomings central legislation, few changes should be considered in the existing draft. First and foremost this enactment should extend to whole of India including state of Jammu and Kashmir. The definition of lynching either should exclude the specific grounds as mentioned in the present draft or words “any other related grounds” should be replaced with “any other grounds”. Similarly, in the definition of mob the words “two or more” should be replaced with “five or more”. This central bill should include the appointment of the nodal officers and Special Squads to handle the mob and prevent the incidences of lynching. Also these nodal officers and the officers in the special squads should be made to undergo special training. Additional power relating to quick actions should be given to such officers which should be specifically mentioned and describe under the Act. Provisions relating to right of accused and protection of the accused should also be mentioned as there is high possibility of charging the persons involved in the act and placing liability insufficiently or incorrectly since it can be difficult to ascertain liability of certain persons in the group. Lastly, more emphasis should be on awareness about this menace, rehabilitation of victims and compensation to victims.

CONCLUSION:

The Legislative measures taken to curb the menace of mob lynching were long due and therefore every step taken towards curbing this menace is a big and much valued step. However,

every proposed enactment should be critically studied to avoid any misuse. Since the term mob lynching is not defined in any other act and even though the concept is old but the term itself is new it should be carefully defined so that it can aid in solving the problem instead of creating more confusion leading to misuse of it. The current central legislation seems to focus more on duties of police officer creating an impression that mostly the police force is at fault. It is not denied that police plays the most important role in prevention of crime as well as detection of crime but burdening the police with additional unnecessary duties instead of empowering police with special training and additional powers will lead to dead end. After considering all these the shortcomings and any other, it is high time that the legislature takes the next step and passes the comprehensive Central law.

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