

Hate Speech & Mob Lynching: A Study Of Its Relations, Impacts & Regulating Laws

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ABSTRACT

It is truly said that words are more dangerous than the direct hurt. In a democratic country like India, where in the name of freedom of speech & expression, when people can not only criticize the government policy but can also make personal comments on individuals irrespective of his/her constitutional positions and even have freedoms to say “Bharat tere tukde honge”, it becomes more dangerous. Though there are laws to restrict this but implementation in reality is zero. Even if it is tried, a large no. of groups stand together to oppose it.

Hate speech is one of the most burning issues of recent time and its connectivity with mob lynching has made it a most dangerous way of speech as it has caused loss of many lives. In this paper researchers have tried to explore the connectivity of Hate speeches with the Mob lynching and made suggestions for combating the same.

INTRODUCTION

Freedom of speech is one of the most fundamental components of a healthy democracy. It gives opportunity to the people to participate in the social, legal and political happenings of their country. This freedom is a part of fundamental right that means the basic right, without which a person cannot make his or her progress.

With the use of free speeches, people could come together to achieve political, social and legal goals. Sound discussions not only enlighten the citizens but also give solution of a burning issue. This freedom is so important that it is guaranteed not only by the constitutions of many countries but also by various acts, protocols, international conventions and many more.

We can say that this Freedom which is the essence of a free society, is at one side a mother of many other rights like: right to know, freedom of communication and the right to propagate or publish opinions but at another side it is also true that it gives birth to many evils like: defamation, provocation to commit crime and hate speech. Therefore this Freedom of Speech and expression, though very important one, was not made absolute by the constitution makers. It

has been restricted on many grounds like, if it is against the security of state or Sovereignty and integrity of India or Friendly relations with foreign states or Public Order or Decency or morality or it is causing Contempt of Court or Defamation or Incitement to an offense.

Great saints and philosophers have already expressed the limits of this freedom in their own way:

ऐसीबानीबोलिए, मनकाआपाखोय |
औरनकोशीतलकरै, आपहुशीतलहोय ||
कुटिलवचनसबसेबुरा, जासेहोतनचार |
साधूवचनजलरूपहै, बरसेअमृतधार ||
बोलीएकअनमोलहै, जोकोईबोलैजानि, |
हियेतराजूतौलिके, तबमुखबाहरआनि ||

-Kabir

“Give me the liberty to know, to utter, and to argue freely according to conscience, above all liberties”.

-John Milton

Therefore it is clear that not only laws but also our values and ethics say that we should not express a thing which can cause troubles not only for others but also for us.

But the human behavior never accepted these limits. On daily basis you can find a lot of evidences where these limits have been crossed. Take the comments of Mr. Azam Khan (MP from Rampur UP) on BJP leader Jayaprada or the comments of Congress President Mr. Rahul Gandhi on PM Mr. NarendraModi that “Chaukidarchorhai” or the comments of CM of West Bengal Ms. MamtaBenarjee on people’s slogan ‘Jai Shri Ram.’ Apart from this the speeches of Owaisi brothers (AIMIM Leaders) against Hindus, Speeches of Raj Thackrey (MNS leader) against North Indians are itself offensive. Can you say that this is a part of freedom of speech and expression? Never. It’s not a speech that comes under purview of Article 19 of Indian

Constitution but it's a hate speech, the speech that 'incites, promotes or justifies hatred, violence and discrimination against a person or group of persons for a variety of reasons.

HATE SPEECH

According to Merriam Webster's dictionary, "A speech that is intended to insult, offend, or intimidate a person because of some trait (as race, religion, sexual orientation, national origin, or disability)"

Hate speech is a communication that carries no meaning other than the expression of hatred for some group, especially in circumstances in which the communication is likely to provoke violence. It is an incitement to hatred primarily against a group of persons defined in terms of race, ethnicity, national origin, gender, religion, sexual orientation, and the like. Hate speech can be in any form of expression regarded as offensive to racial, ethnic and religious groups and other discrete minorities or to women.

It's a speech or expression that denigrates a person or persons on the basis of (alleged) membership in a social group identified by attributes such as race, ethnicity, gender, sexual orientation, religion, age, physical or mental disability, and others.

MOB LYNCHING

Mob lynching can be kept under the term 'collective violence'. Theoretically Collective violence is a behavior of mob which, compared with conventional and everyday behavior, is less inhibited, more spontaneous, more open to change, less structured, less stable, and generally shorter lived. One by-product of mass action can be collective violence. The specific forms of collective violence are riots, gang violence, terrorism, war, Coups, rebellions, and revolutions. Mob lynching is a new branch of this collective violence. A lynch mob is an angry crowd of people who want to kill someone without a trial, because they believe that person has committed a crime. In another words it is a kind of violent act that involves 'violence against individuals by mobs', often on the pretext of racial discrimination, inter-faith relationships and at present more often on the pretext of cow protection. In simple words it means, "Killing someone for an alleged offence without a legal trial.

ROLE OF HATE SPEECH IN MOB LYNCHING

Though these are two different terms but are connected to each other's.

It is connected with the hate speech as most of the time perpetrators of this crime record and circulates the videos of the issues which is attached with the sentiments of a particular group through various modes like social media and thus provoke Mob Lynching.

Following cases are noteworthy in this regard:

1. In 2016 in the same state i.e. Jharkhand two people were killed by a local “cow protection” group on an information that cows are being transported for slaughtering by some people going.
2. In 2016 in New Delhi, a 40-year-old dentist was beaten to death by a group of people, including four juveniles. This mob was incited by a hate speech of a lady standing there.
3. In 2017 in Haryana a man was killed when a message was spread related to seat dispute with the person of another community.
4. In 2017, a mentally ill woman was lynched in West Bengal after a 14-year old child went missing in the area. Here again was a hate message against Bangladeshi child abductors being active in the area.
5. In 2017 in Jharkhand a person was killed by the cow protection group where a person had sent a WhatsApp message to a group of vigilantes calling them to the scene is a recent case of mob lynching that happened through a hate speech through a toll of social media.
6. In 2018 in Bihar a person was killed by the mob on a message that persons of a particular community had thrown stones at the procession of another community.
7. In 2018 multiple mob attacks in Andhra Pradesh of Hindi-speaking people as false hate messages spread that child abductor gangs from Bihar and Jharkhand were active in the state.
8. In 2019 a 44-year-old man was lynched to death in this district of Bihar over a hate message of cattle theft.
9. Recent case of mob lynching has been recorded in Jharkhand, where a person was killed by a mob of another community on a hate message.

This list is only illustrative in nature not the exhaustive one. We can find many cases in Indian history, on this topic. Violence against Sikh community in the year 1984 is the best example of hate speech and mob lynching. Lynching is not a problem that is limited to the India. Various UN reports refer to lynching cases from US, Sudan, Nigeria, Haiti and other countries. Cases of mob

lynching can be seen in Pakistan and Bangladesh in matters of blasphemy. Mob against the accused are always instigated by hate speech. Apart from this cases of mob lynching in Pakistan, Bangladesh and even in Jammu & Kashmir and in west Bengal against a particular community is very common and every time you can notice a hate speech.

EYES OPENING FACTS OF HATE SPEECH AND MOB LYNCHING RELATIONSHIP

1. The incidents of mob lynching have become rampant across the country in the past few months, with most attacks happening over 'child-lifting' and 'cow slaughtering' rumors.
2. According to a report, most of the time people have been killed in the country due to several fake media videos and messages.
3. Social media has been turned to anti-social at the hands of rumor mongers leading to lynching.
4. Investigating agencies have also accepted that most of the time rumors are behind mob lynching. Last year Tripura DGP AK Shukla said, "It has been noticed that SMS, WhatsApp and social media platforms such as Facebook, Twitter and YouTube are being widely used for transmission of fake images and videos as well as text messages which have potential to incite violence in the state at a larger rate."
5. All the incidence of mob lynching, that happened in Maharashtra, Tripura, Uttar Pradesh, Assam, Andhra Pradesh, Karnataka, Telangana or in Tamil Nadu, were caused by fake messages in circulation on WhatsApp and rumors on other social media.
6. Government of India has also affirmed that disinformation, rumours and fake news are sources of mob violence and in all attacks, that took place in last few years, more than 77 % mob violence cases were related to rumors and attributed to fake news spread through social media.
7. The ministry of electronics and information technology on 2 July, 2018, issued a warning to Whatsapp, observing that "instances of the lynching of innocent people because of a large number of irresponsible and explosive messages filled with rumours and provocation are being circulated on WhatsApp". The ministry said subsequently in a press release on 3 July, 2018, stating clearly that "WhatsApp must take immediate action to end this menace and ensure that their platform is not used for such malafide activities".

8. The evidence collected by IndiaSpend suggests that since 2010, there were as many as 87 incidents of hate crimes on 289 victims in cow related violence. Significantly, 98% of these mob lynching incidents have taken place since May 2014.
9. As per DainikBhaskar (29 July 2018) investigations in 12 States, only two persons have been convicted in crimes relating to mob lynching.
10. In between 2014 to 3 March 2018, 45 persons were killed in 40 cases of mob lynching across nine States.

LEGISLATIVE & JUDICIAL STEPS TO CURB HATE SPEECH & MOB LYNCHING

Mob lynching is not an ordinary crime. Supreme Court of India has also observed, “Citizens cannot take the law into their hands or become law unto themselves,” and added that “horrendous acts of mobocracy” cannot become the new norm. Therefore there is an urgent need to bring in a special law to deal with the menace of mob lynching. The special law dealing with the mob lynching cases against scheduled caste and scheduled tribes — the SC/ST (Prevention of Atrocities) Act 1989 — has acted as a great deterrent but for others, immediate laws are required to be enacted as soon as possible. On 23 July 2018, the Union Government indicated its first concrete instance of concern towards mob lynching incidents, in the wake of the Supreme Court directive to curb mob lynching violence. It constituted a high level committee under the Union Home Secretary to deliberate about the issue and make recommendations within four weeks. In addition, the government also set up a Group of Ministers (GoM) headed by the Union Home Minister to consider the recommendations of the high level committee. The Minister, External Affairs, Minister, Road Transport and Highways; Shipping, Water Resources, River Development and Ganga Rejuvenation, Minister, Law & Justice and Minister, Social Justice and Empowerment were made members of the Group of Ministers. Apart from this, In the aftermath of the incidents, social organizations, media houses and student communities are trying to join hands to create awareness on the responsible use of networking websites.

When we talk about the laws, which can curb these violent activities, we have a lot but not a specific law on this particular issue. The Indian Penal Code (IPC) does not mention the word "lynching". However, Section 223(a) of the Code of Criminal Procedure (CrPC), 1973 states that persons or a mob involved in the same offence in the same act can be tried together. Somehow this provision has not helped in delivering justice in cases of lynching. Apart from this Article 19 & 21 of Constitution of India itself contain provisions regulating freedom of speech that causes

violence. Sections 124A, 153A, 153B, 295A, 298 & 505 of Indian Penal Code, sections 8, 123 & 125 of Representation of The People Act, 1951, section 7 of Protection of Civil Rights Act, 1955, section 3 of Religious Institutions (Prevention of Misuse) Act, 1988, sections 5 and 6 of Cable Television Network Regulation Act, 1995, sections 4, 5B & 7, sections 95, 107, 144 & 155 of Code of Criminal Procedure, 1973 have provisions to curb the hate speeches that may cause violence either in the forms of riots or mob lynching.

Multiple laws on one topic and that too unclear, have made the situation unmanageable, hence a single law on this topic is required. Supreme Court of India has also expressed termed lynching as "horrendous acts of mobocracy" and directed the Centre and state governments to take "preventive, remedial and punitive measures" to curb it "with iron hands" and till the time it has directed the police to register an FIR under Section 153A of IPC and other such provisions of law against those who indulge in these kind of activities. For quick disposal of the same, the Supreme Court has proposed day-to-day trial in fast track courts and additionally, maximum punishment to the accused in mob lynching cases. On Supreme Court's direction as well as on the direction by Bombay High Court, the Maharashtra government had assured the courts of formulating a policy on cases of lynching by mobs and it is under process but Manipur has become the first state to make law on this burning issue. Supreme Court has also directed the Centre and state governments to take "preventive, remedial and punitive measures" to curb it "with iron hands".

SUGGESTIONS

Following things can be done to protect the society from this heinous crime:

1. Enactment of new law on this topic is the fundamental need to curb this problem.
2. Dimensions of Freedom of speech are required to be fixed.
3. Grounds of restrictions are required to be reframed and restructured.
4. Censorship on mass & social media is required to be imposed strictly.
5. Policy should be framed to make social media accounts on verification of Aadhar or like identity proof documents.
6. Messaging should be made as a paid service.
7. In short, opening social media account should be made parallel to a postpaid/ prepaid mobile connection.

8. Sending messages having hate contents should be made punishable. Sender and receiver of messages having hate contents must be punished with the offender on the principle of Joint Liability as contained in section 34 of Indian Penal Code.
9. Social media and other media stake holders should be held liable like abettor of crime.
10. All social media accounts should be suspended or deactivated immediately if found engaged in hate speeches and should be activated only after a recommendation of a panel, made specifically for investigation, enquiry and recommendation in these cases.
11. Recording mob lynching incident and spreading it through social media should be made punishable.
12. Social media apps must remind its users to not forward unverified information or misinformation.
13. The acceptable use policy which is available only in English must be available in others too.
14. Literacy training must be provided to its users on the fact that the platform has rumours and misinformation and how to spot them and avoid becoming a source of it.
15. Social media forwards and memes must contain originators details, and that a “fact check” option must be inserted at the users end to allow a message to be decrypted. A database of ‘reported hashes’ must also be created, which all users can download, and which would automatically rate messages on ‘trust’.
16. Training should be given to help people to identify fake news and question the information they receive.

SUPREME COURTS GUIDELINES

On July 17, 2018, the Supreme Court delivered a detailed order that specified a long list of guidelines for the police and the state governments in these matters. These guidelines included preventive measures (like designated officers to prevent violence, official sensitization and prevention of hate speech), remedial measures (like fast tracking of cases and protection to witnesses and victims) and punitive measures (like command responsibility for state officials). It “recommended” that Parliament formulate “a separate offence for lynching and provide adequate punishment.” One of the important guidelines was that the state and police must use data in order to locate hotspots and address cases of mob violence.

CONCLUSION

Study shows that hate speeches, easily attacks the mind of a sensitive group and advantage of this situation is taken by another. He or she simply uses some statements that can strike the minds of the group and thus cause mob lynching. Most of the time these smart inciters are politicians who use the mob for their own greed. Enmity, political rivalry or other reasons may be there to use the power of lynch mob. At present 'Gou Raksha' is a medium to show the muscle power and under the guise of this, opponents are being targeted.

In last five years an increase has been noticed in these cases. Approx 5% growth has been recorded and every time it was inspired by a hate speech. Political parties and the groups having superiority feelings are the key responsible persons. Social media is an easy weapon to trigger the violence against a particular community.

Therefore restriction on Freedom of speech and expression is badly needed but there should be a reasonable and proper nexus or relationship between the restriction and freedoms because this freedom is the bulwark of democratic government and is essential for the proper functioning of democratic process and is regarded as the first condition of liberty.

While India is still in a process to make law on hate speech & mob lynching, another countries and even small countries have already made laws on the same. US, European nations, Germany, Japan, Nigeria, Malaysia have drafted anti-lynching law but in India it is still in infant state. In many other countries provisions have been made to curb lynching by controlling fake news.

In this regard ECRI's work is noteworthy. European Commission against Racism and Intolerance (ECRI) in its General Policy Recommendation No. 15, has prescribed that hate speech is based on the unjustified assumption that a person or a group of persons are superior to others; it incites acts of violence or discrimination, thus undermining respect for minority groups and damaging social cohesion. In this recommendation, ECRI calls for speedy reactions by public figures to hate speech; promotion of self-regulation of media; raising awareness of the dangerous consequences of hate speech; withdrawing financial and other support from political parties that actively use hate speech; and criminalizing its most extreme manifestations, while respecting freedom of expression. Anti-hate speech measures must be well-founded, proportionate, non-discriminatory, and not be misused to curb freedom of expression or assembly nor to suppress criticism of official policies, political opposition and religious beliefs.

ECRI has always considered that criminal prohibition is necessary when hate speech publicly incites violence against individuals or groups of people. At the same time criminal sanctions should be used as a measure of last resort and, all along, a balance must be kept between fighting hate speech on the one hand, and safeguarding freedom of speech on the other.

In India we too need the same measures to curb these activities. But above all an important step, which is required from everyone to be taken, is self-regulation. Self-regulation by public and private institutions, media and the Internet industry, such as the adoption of codes of conduct accompanied by sanctions for non-compliance are of real worth. Education and counter-speech are also equally important in fighting the misconceptions and misinformation that form the basis of hate speech. Therefore, effective action against the use of hate speech requires raising public awareness of the importance of respecting pluralism and of the dangers posed by hate speech. The conclusion can be in the words of a renowned poet Mr. Shakil Ahmad:

Don't spread venom
from your cute lips
Spread love from your tender heart
like the shower of summer's rain

References:

1. Bhatia, Gautam (2016) *Offend, Shock or Disturb: Free Speech under the Indian Constitution*, Oxford University Press, New Delhi
2. Kashyap, Subhash (2009) *Concise Encyclopedia of Indian Constitution*, Vision Books, New Delhi
3. Puniyani, Ram (2005) *Religion, Power and Violence: Expression of Politics in Contemporary Times*, Sage Publications Pvt. Ltd., New Delhi
4. Hasan, Zoya (2011) *Politics of Inclusion: Castes, Minorities and Affirmative Action*, Oxford University Press, New Delhi
5. Basu, D. D. (2011) *Introduction to the Constitution of India*, Lexis Nexis, New Delhi
6. Sivakumar, S. (2015) *Press Law and Journalists* 11 Universal Law Publishing Co., Gurgaon
7. *The Indian Penal Code (IPC) 1860*, (2018) Universal Law Publishing Co., Gurgaon
8. *Code of Criminal Procedure (CrPC)*, 1973, (2019) Universal Law Publishing Co., Gurgaon
9. *Representation of The People Act, 1951* (2016) Universal Law Publishing Co., Gurgaon
10. *Protection of Civil Rights Act, 1955* (2019) Universal Law Publishing Co., Gurgaon
11. *Religious Institutions (Prevention of Misuse) Act, 1988*.
12. *Cable Television Network Regulation Act, 1995*.

13. Law Commission of India Report
14. <https://www.coe.int/en/web/european-commission-against-racism-and-intolerance/hate-speech-and-violence>
15. <https://definitions.uslegal.com/h/hate-speech>
16. <https://scroll.in/article/863176/2017-india-is-undercounting-religious-hate-crimes-by-not-invoking-a-crucial-section-of-the-law>
17. <https://scroll.in/article/912533/the-modi-years-what-has-fuelled-rising-mob-violence-in-india>
18. <https://www.britannica.com/topic/hate-speech>
19. https://www.business-standard.com/article/current-affairs/lynching-uptake-at-least-18-people-killed-in-8-states-since-may-23-118070200458_1.html
20. <https://www.cfr.org/backgrounder/hate-speech-social-media-global-comparisons>
21. <https://www.coe.int/en/web/european-commission-against-racism-and-intolerance/recommendation-no.15>
22. <https://www.collinsdictionary.com/dictionary/english/lynch-mob>
23. <https://www.firstpost.com/india/24-persons-killed-in-mob-attacks-in-2018-analysis-shows-such-incidents-rose-by-4-5-times-since-2017-4698181.html>
24. <https://www.firstpost.com/india/man-lynched-in-bihars-araria-on-suspicion-of-cattle-theft-police-say-victim-was-accused-of-same-crime-in-past-register-case-6562341.html>
25. <https://www.firstpost.com/india/supreme-courts-order-on-mob-lynching-is-strong-but-new-law-will-be-useless-as-long-as-existing-rules-arent-implemented-4759151.html>
26. <https://www.hindustantimes.com/delhi-news/40-year-old-delhi-dentist-beaten-to-death-over-dispute/story-6B3iRScICAoyojEXaFx1AP.html>
27. <https://www.hrw.org/report/2019/02/18/violent-cow-protection-india/vigilante-groups-attack-minorities>
28. <https://www.indiatoday.in/india/story/16-lynchings-in-2-months-is-social-media-the-new-serial-killer-1275182-2018-07-02>
29. <https://www.merriam-webster.com/dictionary/hate%20speech>
30. <https://www.orfonline.org/expert-speak/42867-why-need-special-law-curb-mob-lynching>
31. https://www.washingtonpost.com/graphics/2018/world/reports-of-hate-crime-cases-have-spiked-in-india/?utm_term=.0042ad0f22b1
32. https://www.washingtonpost.com/world/asia_pacific/how-delayed-justice-after-hate-crimes-in-india-worsensreligious-divisions/2019/04/05/899e837a-45d1-11e9-94ab-d2dda3c0df52_story.html?noredirect=on&utm_term=.44552b263a9c