

A Comparative Study of Mob Lynching Laws in India and United States of America

Kumar Roshan Dusad

Research Scholar, Law, University Of Science And Technology, Meghalaya.

Abstract:

Mob Lynching in both India and the US has deep historical roots and significant social implications, but the contexts and dynamics differ. Lynching in India is often driven by a mix of religious, caste, and social factors. Incidents of mob violence in India have been linked to rumours spread via social media, religious intolerance, and caste-based discrimination. For example, cow vigilante groups have been responsible for several lynchings, targeting individuals accused of cow slaughter or beef consumption. Unlike the US, India does not have a specific law addressing lynching, though there have been calls for such legislation. Both countries face challenges in addressing the root causes of lynching. In the US, the legacy of racial violence continues to impact African American communities, while in India, the intersection of religion, caste, and social media misinformation complicates efforts to prevent mob violence. It is a complex issue that requires a multifaceted approach, including legal reforms, social education, and community engagement. This paper attempt to address the problem of mob lynching in India and US and a comparative analysis of the two to solve the problem in India.

Introduction

The dictionary meaning of “lynching” is “to put to death (as by hanging) by mob action without legal approval or permission. This often involves violence and can be motivated by anger, prejudice, or a desire for retribution. Lynching is illegal and a severe violation of human rights, undermining the rule of law and due process. This form of vigilante justice is often driven by perceived or alleged offenses, though it frequently targets individuals based on race, religion, or social status rather than actual crimes. Historically, lynching has been used as a tool of terror to maintain power dynamics and suppress marginalized groups. It is a grave violation of human rights and a stark reminder of the dangers of mob mentality and extrajudicial actions. The fight against lynching involves not only legal measures but also efforts to address the social and cultural factors that contribute to such acts.

The repeated reported incidents of mob lynching in India represent a growing negation of fundamental right to life and liberty encapsulated in Article 21 of the Indian Constitution. This is crucial since the country is in the process of adopting its new criminal laws. On July 1, the new Indian Criminal Law, Bharatiya Nyaya Sanhita (BNS) came into force. For the first time capital punishment has been introduced for the offence of mob lynching, alongside imprisonment of seven years to life. While this change is welcome, but its execution shows that the general lack of action and apathy by both the administration remains a concern. Notably, the National Crime Records Bureau (NCRB) has not recorded data on mob lynching since 2017, citing unreliability of data as allegedly mob lynching incidents are being recorded by the police in certain States as brawls or accidents. Alongside police’s apathy, in most incidents political patronage appears to play a role. In 2018, the government when questioned about rising incidents

of mob lynching in the Parliament, put the blame on the prevalence of social media and internet in causing such violence. It blamed “unverified fake news” and asked “social media platforms to ensure that proper checks were installed in their platforms”.

In the US, lynching was predominantly a racial issue, particularly targeting African Americans in the late 19th and early 20th centuries. It was a tool of racial terror used to enforce white supremacy and segregation. The infamous period of lynching in the US saw thousands of African Americans brutally murdered by mobs, often with the tacit approval of local authorities. The Civil Rights Movement and subsequent legislation, such as the Civil Rights Act, played crucial roles in curbing this violence.

In International perspectives, Lynching has roots that go back to colonial America, where violence and extrajudicial punishment were common. In the 17th and 18th centuries, lynching often targeted enslaved people or those accused of crimes against colonial laws. The practice was part of a broader culture of harsh and public punishment intended to maintain order and discipline. Nineteenth century people defined lynching as violence sanctioned, endorsed or carried on by a neighbourhood or community acting outside the law. Lynch law is not a law, rather it is just an opposite: violent justice administered by mob outside the law. The very terms we define mob violence mock the normal workings of courts and lawyers. From 1882 to 1968, 4,743 lynching occurred in the U.S., according to a record. Other accounts, including the Equal Justice Initiative's extensive report on lynching, count slightly different numbers, but it's impossible to know for certain how many lynching occurred because there was no formal tracking. Many historians believe the true number is underreported. White mobs often used dubious criminal accusations to justify lynching. A common claim used to lynch Black men was perceived sexual transgressions against white women. Charges of rape were routinely fabricated. These allegations were used to enforce segregation and advance stereotypes of Black men as violent, hypersexual aggressors. Hundreds of Black people were lynched based on accusations of other crimes, including murder, arson, robbery, and vagrancy. Many victims of lynching were murdered without being accused of any crime. They were killed for violating social customs or racial expectations, such as speaking to white people with less respect than what white people believed they were owed.

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Historical Perspective

INDIA

Lynching is a not a new concept in India. Although the term is new, but incidents of such happenings was prevalent from the early times in India. Various accounts talk about different ways in which such acts were carried out in the past, although varied from region to region. Mob lynching is shown to have existed from the ancient times, especially in the Hindu mythologized history of India, where India's materialist philosopher Charvaka, was not just killed, but was demonized and his ideas distorted for generations. Charvaka was physically eliminated by a mob of servile brahmins because he could speak truth to power.

(so much for being called a “sweet talker” – a Charvaka!). The description of this is given in Mahabharata.¹ Another form of such events is the practice of ‘sati’. It was early ancient Hindu customs during those days. However, it was considered to be a voluntary act, in which, as a sign of being a dutiful wife, a woman followed her husband to the afterlife. With time, it became a forced practice. Women who did not wish to die, were forced to do so in different ways and were pressurized to accept sati.

Lynching is a form of extra judicial killings has a controversial and disturbing history that dates back to India’s struggle for Independence. During British colonial rule in India, lynching was not a systematic or officially sanctioned practice, but instances of mob violence and extrajudicial killings did occur. The British authorities often dealt with such violence by enforcing laws and deploying police forces, but there were occasions when colonial officers and settlers engaged in or condoned acts of vigilante justice. ‘Sepoy Mutiny of 1857’, ‘the genocide of Jallianwala Bagh, 13th April 1919’, ‘the chauri-chaura incident’ etc. are some of the examples of such horrific incidents. After India gained independence in 1947, the issue of lynching has continued to manifest in various forms, driven by political, communal, and social factors. The partition of India in 1947 led to widespread communal violence, which included numerous instances of lynching and mob violence. This period saw horrific acts committed by various groups against perceived enemies or rivals, contributing to the post-independence landscape of communal strikes.

In recent years, mob lynching has become a significant issue in India, often linked to specific incidents or trends. For eg: Cow Vigilantism, Communal and Political Violence, Communal Riots, rumors of child lifters and witchcraft, fake news, honor killing. Overall, the historical background of mob lynching in India reveals a pattern of violence intertwined with social, political, and religious factors. Addressing this issue requires a comprehensive approach involving legal reform, societal change, and vigilant enforcement of justice.

USA

Christopher Waldrep, has written his book, titled, “The Many faces of Judge Lynch” which narrated the extra-legal violence and punishment in America. He realized that lynching seemed more a subject for sociologists than historians.² Even the books written by historians seemed sociological, either case studies or quantitative analyses limited to lynchings between 1880 and 1930 or 1940. History is often said to be the study of change over time but few changes have been identified in the nature of lynching.

Historians broadly agree that lynching were a method of social and racial control meant to terrorize black Americans into submission, and into an inferior racial caste position. They became widely practiced in the US south from roughly 1877, the end of post-civil war reconstruction, through 1950. A typical lynching would involve criminal accusations, often dubious, against a black American, an arrest, and the assembly of a “lynch mob” intent on subverting the normal constitutional judicial process. Victims would be seized and subjected to every imaginable manner of physical torment, with the torture usually ending with being hung from a tree and set on fire. More often than not, victims would be dismembered and mob members would take pieces of their flesh and bone as ‘souvenirs’. According to a data, Mississippi, Florida, Arkansas,

¹ “Lynching in Ancient India? The Case of Charvaka – Beyond Capital”, available at: [https://Lynching in Ancient India? The Case of Charvaka – Beyond Capital \(wellburrowed.com\)](https://Lynching in Ancient India? The Case of Charvaka – Beyond Capital (wellburrowed.com)) (last visited on july 2024).

² C. Waldrep, “The Many Faces of Judge Lynch: Extralegal Violence and Punishment in America” (Palgrave Macmillan, 2002nd edition, May 2, 2003)

Georgia and Louisiana had the highest number of lynchings in the United States.³ Lynching culture was also prevalent in arts and literature in 18th century America. In 1968, Hoyt Fuller wrote that "black people are being called 'violent' these days, as if violence is a new invention out of the ghetto. But violence against the black minority is in-built in the established American society". Fuller's statement not only reminds us of violence's consistent presence throughout African American history but also that this history was a concern of Black Arts writers. Although Black Arts literature frequently construes violence as black aggression towards whites, as in Amiri Baraka's "Black Art," or in the context of a race war, as in Baraka's *The Slave*, a significant body of poetry emphasizes that the contemporary structural violence towards blacks by whites is in fact a continuation of the brutality that African Americans have historically endured.⁴ It is to be understood that America's legacy of lynching isn't all about history; many say it's still happening today. Lynching is a charged, nebulous word. It evokes terrifying specters of the nation's past, but talk to those most connected to the crimes and those who study America's lynching legacy, and they'll say many African Americans don't consider it history, because it's happening now.⁵

Lynching incidents decreased quickly during the period of 1870s. Before the finish of the 1900, with battles overwork and disappointment, and proceeding with farming despondency, lynching rose once more. The quantity of lynching topped toward the finish of the nineteenth century, yet these sorts of killings proceeded into the twentieth century.

Existing Laws of lynching in India

The Constitution of India declares India as a Democratic, Republic, Socialist and Secular state. India being a democratic country is the government of the people, by the people and for the people. The preamble provides every person with justice, liberty, equality and fraternity along with unity and integrity of the nation. Despite the constitutional provisions existing, mob-lynching incidents have been increasing continuously every year. It has now seemed to be a day-to-day event in India. The Constitution of India is considered as the parent law of the land and it is also grund-norm and grants validity to all local laws in the territory of India. It provides various fundamental rights and freedoms to the citizens and also remedies for breach of these rights. Mob lynching is clear violation of Article 14, Article 15 and Article 21 of the constitution of India. Article 14 guarantees equality before law and equal protection of laws. Equal protection is ensured under this Article to the victims of mob violence or even to the culprits of the offence, law provides all legitimate opportunities without any discrimination. Article 15 provides protection against any form of discrimination. Article 21 of Constitution of India discusses the mentioned right as, "No person shall be deprived of his life or personal liberty except according to procedure established by law." The right to life and personal liberty under Article 21 is not limited to mere animal existence but includes the right to live with dignity.

To understand the existing law relating to mob lynching, it is important to focus on the newly introduced three criminal laws, BHARTIYA NYAYA SANHITA, 2023, BHARTIYA NAGRIK SURAKSHA

³ Jamiles Lartey and Sam Morris, "How white Americans used lynchings to terrorize and control black people", *The Guardian*, 26th April, 2018, available at: <https://www.theguardian.com/us-news/2018/apr/26/lynchings-memorial-us-south-montgomery-alabama> (last visted 26 july, 2024)

⁴ David Kieran, "Remembering Lynching and Representing Contemporary Violence in Black Arts Poetry", *The Journal of the Midwest Modern Language Association*, Spring, 2008, Vol. 41, No. 1 (Spring, 2008), pp. 34-45.

⁵ Elliott C. McLaughlin, CNN, "America's legacy of lynching isn't all about history; many say it's still happening today", *CNN, US*, 3june 2020, available at: <https://edition.cnn.com/2020/06/03/us/lynching-america-george-floyd-ahmaud-arbery-breonna-taylor/index.html>. (last visited on 05 jan,2024).

SANHITA, 2023, and THE BHARATIYA SAKSHYA ADHINIYAM, 2023. There is an attempt to understand the changes introduced in new laws and to analyse whether they have addressed the problem of the study. Section 103 of Bhartiya Nyaya Sanhita, 2023, have increased the punishment for murder with death or imprisonment for life with fine, if it is committed by a group of five or more people specially based on conditions like religion, caste or community, place of birth, personal belief etc.

Section 111 of the **Bhartiya Nyaya Sanhita** (BNS) refers to the provisions related to mob lynching. This section aims to define and penalize certain acts relating to mob lynching, establishing a legal framework to address such crimes. Grievous hurt caused by a mob of five or more people have also been punished separately under the provision of Sec 117(4) of the BNS.

The **Bhartiya Nagrik Suraksha Sanhita, 2023** (BNSS) includes provisions to address the issue of mob lynching. Although the BNSS itself may not explicitly mention "mob lynching," it seeks to improve legal definitions and the handling of crimes involving mass violence and communal hatred. Under BNSS, unlawful assemblies might be scattered through the accompanying methods through- command under Section 148 (1), use of civil force under Section 148 (2), use of Armed Forces -Section 149, power of armed force officers to utilize power under Section 150.

The Bharatiya Sakshya Adhiniyam, 2023 can play a significant role in cases of mob lynching by establishing how evidence is presented and evaluated in court. The Adhiniyam constitutes admissible evidence, including witness testimonies, video footage, and forensic evidence, which are crucial in lynching cases.

Existing Laws of Mob Lynching in USA

The Dyer Anti-Lynching Bill (1918) was first law introduced in the 65th United States Congress by Representative Leonidas C. Dyer, a Republican from St. Louis, Missouri, in the United States House of Representatives as H.R. 11279 in order to protect citizens of the United States against lynching in default of protection by the States. In 1918, Missouri Representative Leonidas Dyer, a white Republican, introduced his anti-lynching bill in Congress. A progressive who represented a predominantly African-American district, Dyer was deeply disgusted by the violence resulting from race riots in St. Louis and continued lynching across the South.

Dyer Anti-Lynching Bill

APRIL 20 (calendar day, JULY 28), 1922.

AN ACT To assure to persons within the jurisdiction of every State the equal protection of the laws, and to punish the crime of lynching.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the phrase "mob or riotous assemblage," when used in this act, shall mean an assemblage composed of:

SEC. 2. That if any State or governmental subdivision thereof fails, neglects, or refuses to provide and maintain protection to the life of any person within its jurisdiction against a mob or riotous assemblage, such State shall by reason of such failure, neglect, or refusal be deemed to have denied to such person the equal protection of the laws of the State, and to the end that such protection as is guaranteed to the citizens of the United States by its Constitution may be secured it is provided:

SEC. 3. That any State or municipal officer charged with the duty or who possess the power or authority as such officer to protect the life of any person that may be put to death by any mob or riotous assemblage,

or who has any such person in his charge as a prisoner, who fails, neglects, or refuses to make all reasonable efforts to prevent such person from being so put to death, or any State or municipal officer charged with the duty of apprehending or prosecuting any person participating in such mob or riotous assemblage who fails, neglects, or refuses to make all reasonable efforts to perform his duty in apprehending or prosecuting to final judgment under the laws of such State.

SEC. 4. That the district court of the judicial district wherein a person is put to death by a mob or riotous assemblage shall have jurisdiction to try and punish, in accordance with the laws of the State where the homicide is committed, those who participate therein: Provided, That it shall be charged in the indictment that by reason of the failure, neglect, or refusal of the officers of the State charged with the duty of prosecuting such offense under the laws of the State to proceed with due diligence to apprehend and prosecute such participants the State has denied to its citizens the equal protection of the laws.

SEC. 5. That any county in which a person is put to death by a mob or riotous assemblage shall, if it is alleged and proven that the officers of the State charged with the duty of prosecuting criminally such offense under the laws of the State have failed, neglected, or refused to proceed with due diligence to apprehend and prosecute the participants in the mob or riotous assemblage, forfeit \$10,000, be recovered by an action therefore in the name of the United States against any such county for the use of the family, if any, of the person so put to death; if he had no family, then to his dependent parents, if any; otherwise for the use of the United States. Such action shall be brought and prosecuted by the district attorney of the United States of the district in which such county is situated in any court of the United States having jurisdiction therein.

SEC. 6. That in the event that any person so put to death shall have been transported by such mob or riotous assemblage from one county to another county during the time intervening between his capture and putting to death, the county in which he is seized and the county in which he is put to death shall be jointly and severally liable to pay the forfeiture herein provided.

SEC. 7. That any act committed in any State or Territory of the United States in violation of the rights of a citizen or subject of a foreign country secured to such citizen or subject by treaty between the United States and such foreign country, which act constitutes a crime under the laws of such State or Territory, shall constitute a like crime against the peace and dignity of the United States, punishable in like manner as in the courts of said State or Territory, and within the period limited by the laws of such State or Territory, and may be prosecuted in the courts of the United States, and upon conviction the sentence executed in like manner as sentences upon convictions for crimes under the laws of the United States.

SEC. 8. That in construing and applying this act the District of Columbia shall be deemed a county, as shall also each of the parishes of the State of Louisiana.

That if any section or provision of this acts shall be held by any court to be invalid, the balance of the act shall not for that reason be held invalid.⁶

On December 19, 2018, the U.S. Senate voted unanimously in favour of the "Justice for Victims of Lynching Act of 2018" which, for the first time in U.S. history, would make lynching a federal hate crime. Legislation that would make lynching a federal crime is one step closer to being signed into law, after the Senate unanimously voted to pass the bill. Democratic Sen. Kamala Harris and Sen. Cory Booker,

⁶Available at: <https://naacp.org/find-resources/history-explained/legislative-milestones/dyer-anti-lynching-bill#:~:text=In%201918%2C%20Missouri%20Representative%20Leonidas,continued%20lynching%20across%20the%20South.> (last visited on 12th January, 2025, at 12:00pm)

alongside Republican Sen. Tim Scott spearheaded the Justice for Victims of Lynching Act. They say the legislation is the first of 200 anti-lynching bills to pass in Congress since the early twentieth century. Under the bill, lynching would be considered a hate crime punishable with up to life in prison. That means anyone convicted of lynching would be charged with the crime in addition to any other murder charge they may face.⁷ As of June 2019 the bill, which failed to become law during the 115th U.S. Congress, had been reintroduced as the Emmett Till Antilynching Act. The House of Representatives voted 410–4 to pass it on February 26, 2020. In June 4, 2020, while protests and civil unrest over the murder of George Floyd were occurring nationwide, the bill was being considered by the Senate, with Senator Rand Paul preventing the bill from being passed by unanimous consent. Paul opposed the passage of the bill because, according to Paul, the language was overly broad, included attacks which he believed were not extreme enough to qualify as "lynching". He stated that "this bill would cheapen the meaning of lynching by defining it so broadly as to include a minor bruise or abrasion," and he has proposed the inclusion of an amendment that would apply a "serious bodily injury standard" for a crime to be classified as a lynching.⁸

After multiple failed attempts across twelve decades, there is now a federal law that designates lynching as a hate crime. In a ceremony on 2022, at the White House, President Biden signed the Emmett Till Antilynching Act into law. The measure is named for Emmett Till, a 14-year-old boy who was abducted, tortured and killed in 1955 after the Black teenager was accused of whistling at and grabbing Carolyn Bryant, a white woman, while visiting relatives in Mississippi. Roy Bryant, Carolyn Bryant's husband, and J.W. Milam, Roy Bryant's half-brother, were tried for Emmett's murder and were quickly acquitted by an all-white jury. Under the legislation, perpetrators can receive up to 30 years in prison when a conspiracy to commit a hate crime results in death or serious bodily injury.⁹

State laws of USA

Before the federal law, in US several state laws were passed in the past relating to lynching. California Governor Jerry Brown announced in July, 2015, that he has signed legislation removing the word "lynching" from the state's criminal code following the arrest of a black activist at a 'Black Lives Matter' protest. The Democratic governor signed the bill by Sen. Holly Mitchell within days of receiving it. He signed it without comment.¹⁰ In 1899, Indiana passed anti-lynching legislation. It was enforced by Governor Winfield T. Durbin, who forced investigation into a 1902 lynching and removed the sheriff responsible. Following this, in 1930, a photograph of two African-American men, named, J. Thomas Shipp and Abraham S. Smith, were arrested and taken from jail cells, beaten, and hanged from a tree in the county courthouse square. The reaction to this, caused one 'Flossie', as she was known to her friends,

⁷ Nnamdi Egwuonwu, "The Senate unanimously voted to approve legislation making lynching a federal crime." (Scripps News, 5:41 AM, Dec 20, 2018)

⁸ Foran, Clare; Fox, Lauren (June 4, 2020). "Emotional debate erupts over anti-lynching legislation as Cory Booker and Kamala Harris speak out against Rand Paul amendment", (CNN, June 4, 2020, 11:00pm), available at: <https://edition.cnn.com/2020/06/04/politics/anti-lynching-bill-fight-senate-floor-cory-booker-rand-paul/index.html>.

⁹ Eric McDaniel, Elena Moore, "Lynching is now a federal hate crime after a century of blocked efforts." Npr, MARCH 29, 2022, 4:36PM, available at: <https://www.npr.org/2022/03/29/1086720579/lynching-is-now-a-federal-hate-crime-after-a-century-of-blocked-efforts> (last visited on 13-01-24 at 02:00pm)

¹⁰ The Associated Press "Officials change Calif. law after activist's "lynching" arrest", (July 3, 2015, 10:27 AM) CBS News, available at: <https://www.cbsnews.com/news/california-lynching-law-governor-jerry-brown/> (last visited on 10-01-2025 at 10:25am)

was thirty-five years old, the wife of a doctor with a thriving practice, and also the president of the Marion branch of the NAACP (National Association for the Advancement of Coloured People), the leading civil rights organization in the country at the time, pushed for the 1931 Indiana Anti-lynching law.¹¹ This law provided for the immediate dismissal of any sheriff who allowed a jailed person to be lynched, and allowed the victim's family to sue for \$10,000.¹²

Virginia passed anti-lynching legislation, which was signed on March 14, 1928 by Governor Harry F. Byrd following a media campaign by Norfolk Virginian-Pilot editor Louis Isaac Jaffe against mob violence.¹³ In 1951, South Carolina passed a law criminalizing second-degree lynching, which it defined as "any act of violence inflicted by a mob upon the body of another person and from which death does not result shall constitute the crime of lynching in the second degree and shall be a felony. Any person found guilty of lynching in the second degree shall be confined at hard labor in the State Penitentiary for a term not exceeding 20 years nor less than three years, at the discretion of the presiding judge.

COMPARATIVE OVERVIEW OF LYNCHING IN INDIA AND USA.

a. Historical perspective: Lynching in both India and the US involves extrajudicial killings by mobs, but they differ in their historical context, motivations, and targets. In the US, lynching, particularly, was a racially motivated form of terrorism used to control and terrorize Black people after the Civil War period. In India, while mob violence has been a problem, especially against minorities and marginalized groups, the term "lynching" is often used more broadly to encompass a range of incidents involving mob violence. From the beginning of medieval to modern India, lynching has been always present. From the beginning of mythological events to the present India, lynching has always shown its presence.

b. Victims: The most vulnerable sections of people in these cases of lynching in US are the 'blacks' and their dominance by whites. 'Racism' plays an upper-hand in such country. India on the other hand, the victims were mainly from the marginalised section of people in the society in majority of cases.

c. Laws: In US, hate crime in the form of lynching is now designated as offence under the federal law i.e. Emmett Till Anti-Lynching Act. India, is yet to receive a specific law related to lynching. Although in the new criminal law, the organised crime is designated as an offence under Sec 111 of the Bhartiya Nyaya Sanhita, 2023. A bill titled, The Prevention of Mob-Lynching Bill, 2022 is yet to become an Act.

d. Causes: Mobs often used dubious criminal accusations to justify lynching. A common claim used to lynch Black men was perceived sexual transgressions against white women. Rape was common in such situations. Many were killed for violating social customs, racial expectations and stereo-types.

Conclusion:

In essence, both in India and America, mob lynchings shared the historical context, motivations, and social implications and the impacts of these events, which is significant both for US and India. But USA has a full-fledged law relating to mob lynching now, whereas in India reform in the three criminal laws have been done to address such mob lynching, but a specific law of mob lynching is yet to come.

¹¹ Kaplan, Fran, "Freedom's Heroes During Jim Crow: Flossie Bailey and the Deeters", America's Black Holocaust Museum.(January29,2012),availableat:<https://web.archive.org/web/20230525043426/https://www.abhmuseum.org/freedoms-heros-during-jim-crow-flossie-bailey-and-the-deeters/> (last visited on 17th January, 2025)

¹² Emma Lou Thornbrough, "Indiana Blacks in the Twentieth Century", Bloomington Indiana University Press., p. 69, ISBN 978-0-253-33799-3. 2000.

¹³Smith, Douglas. "Anti-Lynching Law of 1928", Encyclopedia Virginia, available at: <https://encyclopediavirginia.org/entries/anti-lynching-law-of-1928/> (last visited on 16-01-2025 at 2pm)