

IN HATE CRIME FIGHT, A VOICE STILL FEEBLE

Relevant for: Indian Society | Topic: Regionalism, Communalism & Secularism

At a time when India is reeling under hate lynching, it is sobering to remember that it took the United States Senate 100 years to approve a bill to make lynching a federal crime. Over 200 anti-lynching bills were introduced in the U.S. Congress since 1918, but all were voted down until the Justice for Victims of Lynching Act of 2018 introduced by three Senators of African-American descent including Kamala Harris was approved unanimously in the winter of 2018.

The U.S. bill describes lynching as “the ultimate expression of racism in the United States”. Senator Cory Booker said the bill recognised lynching for what it is: “a bias-motivated act of terror”. When will Parliament here recognise, similarly, that lynching is “a bias-motivated act of terror” and “the ultimate expression of communal hatred in India”?

Some may dispute this description, citing the relatively small numbers of such mob crimes. They miss the point that hate lynching is designed as an act to terrorise an entire community. The number of lynch murders in the U.S. mentioned in the bill averages around 55 annually, but despite these small numbers, these performative acts of violence succeeded in instilling intense fear among all African-Americans for decades.

The same purpose is being served by lynching in India; again performative acts of hate violence, but now using modern technology, video-graphing of mob lynching, widely circulating these images through social media, and celebrating these as acts of nationalist valour. These have similarly instilled a pervasive sense of everyday normalised fear in the hearts of every Indian from the targeted minority community. It is this which indeed makes lynching an ultimate act of terror.

The Supreme Court of India recently asked the Union government and all the major States to explain what action has been taken to prevent these growing incidents of lynching, including passing a special law to instil a sense of fear for law amongst vigilantes and mobsters. Kunwar Danish Ali, a first term Bahujan Samaj Party MP from Amroha, raised the same question in Parliament, describing mob lynching as “an assault on democracy”. His inquiry was met with noisy disruptions, but he got no answer.

The Uttar Pradesh Law Commission (UPLC) earlier last month took the initiative, unprompted by the Uttar Pradesh government, to recommend a draft anti-lynching law. It commends a law which closely follows in almost every major detail the first law against lynching passed in this country, a remarkable ordinance introduced by the Manipur government late last year, indeed the most significant statute against religious hate crimes in the country.

A noteworthy observation in the text of the United States bill is that it records that at least 4,742 people were lynched in the U.S. between 1882 and 1968, but 99% of all perpetrators remain unpunished. It is significant to remember that the first anti-lynching legislation proposed as far back as in 1918 in the U.S. targeted state officials for failing to provide equal protection under the laws to anyone victimised by a mob. Impunity characterises lynching in India as well. Addressing this squarely, both the Manipur statute and the UPLC draft create a new crime of dereliction of duty by police officials, holding a police officer guilty of this crime if he or she “omits to exercise lawful authority vested in them under law, without reasonable cause, and thereby fails to prevent lynching”. Dereliction also includes the failure to provide protection to a victim of lynching; failure to act upon apprehended lynching; and refusing to record any information relating to the commission of lynching. This crime carries the penalty of one to three years and a

fine. The UPLC goes further to include also a new crime of dereliction of duty by District Magistrates.

The creation of this new crime was also the key recommendation of the Prevention of Communal & Targeted Violence (Access to Justice and Reparations) Bill, proposed by the National Advisory Council of the erstwhile United Progressive Alliance government (full disclosure: Farah Naqvi and I were co-convenors of the working group which drafted this proposed bill, which however was never even introduced in Parliament). We were convinced that it is only the creation of such a crime that will compel public officials to perform their duty with fairness, in conformity with their constitutional and legal duties, to ensure equal protection to all persons, regardless of their faith and caste.

Both the Manipur law and UPLC recommendations also lay down elaborate duties of police officials in the event of lynching. These include taking all reasonable steps to prevent any act of lynching including its incitement and commission; to that end making all possible efforts to identify instances of dissemination of offensive material or any other means employed in order to incite or promote lynching of a particular person or group of persons; and making all possible efforts to prevent the creation of a hostile environment against a person or group of persons.

Both sensitively and expansively lay down official duties to protect victims and witnesses. They state that a victim shall have the right to reasonable, accurate, and timely notice of any court proceeding and shall be entitled to be heard at any proceeding in respect of bail, discharge, release, parole, conviction or sentence of an accused, and to file written submissions on conviction, acquittal or sentencing. They also explicitly require the Superintendent of Police to inform the victim in writing of the progress in the investigation. The victim shall have the right to receive a copy of any statement of the witness recorded during investigation or inquiry and a copy of all statements and documents.

Where the UPLC goes further than the Manipur statute is in laying down the right to compensation. It places the duty squarely on the Chief Secretary to provide compensation to victims of lynching within 30 days of the incident. It states that while computing compensation, the State government must give due regard to bodily, psychological and material injuries and loss of earnings, including loss of opportunity of employment and education, expenses incurred on account of legal and medical assistance. It also lays down a floor of 25 lakh in case lynching causes death.

The Congress government of Madhya Pradesh has announced its resolve to pass legal provisions against lynching. It chooses curiously to not do this by an anti-lynching law, but instead by amendments to the Madhya Pradesh Cow Progeny Slaughter Prevention Act 2004 (which would effectively limit its scope only to cow-related lynching, and not lynching triggered by other charges).

Its proposed amendments do not include any provisions to punish dereliction of duty, protect victim rights or secure compensation. All that it proposes is punishment for any act by a mob which indulges in violence in the name of cow vigilantism from six months to three years of imprisonment and a fine. It is unclear what deterrence such amendments would instil, since existing laws contain much greater punishments for murder and aggravated attacks. In its present form, it appears a weak, half-hearted and poorly thought-out measure. The Ashok Gehlot-led government in Rajasthan has also tabled an anti-lynching bill. This prescribes higher punishments, investigation by senior police officers, and mandatory compensation but not the critical elements of dereliction of duty or victim rights. Without these, they will make little difference on the ground.

Home Minister Amit Shah now heads a committee to propose action against lynching. The question remains: do we expect Mr. Shah, or indeed Uttar Pradesh Chief Minister Yogi Adityanath to propose a law against lynching which punishes public officials who fail in their duties, protects victims and witnesses, and ensures comprehensive reparation, as proposed by the UPLC and provided in the Manipur statute?

“Someone is finally recognising our pain,” said the great-granddaughter of Anthony Crawford, an African American, who was lynched in 1916. I wonder how long survivors of lynching who lost their loved ones to merciless mob hate in India will have to wait for a government which will recognise their pain.

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