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The Unsocial Contract: Understanding the Indian State's Response to Beef Lynchings

Dhupar, Madhur

Citation

Dhupar, M. (2021). *The Unsocial Contract: Understanding the Indian State's Response to Beef Lynchings*.

Version: Not Applicable (or Unknown)

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The Unsocial Contract:

Understanding the Indian State's Response to Beef Lynchings

Madhur Dhupar

S1994468

Master's Thesis

Political Science: Nationalism, Ethnic Conflict and Development

Institute of Political Science

Leiden University

Supervisor: Dr. Simon Chauchard

First Reader: Dr. Frank de Zwart

Word Count: 9997

5th July 2021

Acknowledgements

There are several people without whom this thesis will have been what is it and for that I am very very grateful. I would like to thank my lovely friends, Farin Hossain, Esther Theisen and Mariya Nadeem Khan for not just their constant emotional support but also for helping me out throughout the whole process. So much has been a product of conversations we have had.

I would also like to thank my mother, who did not like this topic at all at the onset but now has been convinced of its relevance, for just always being there and my dad for the daily word count interrogations, yet again.

I would also like to express my gratitude towards Soutik Biswas, whose input was invaluable.

Lastly, I would like to thank Dr. Simon Chauchard, for being incredibly patient with me, for his feedback and for helping me come up with this topic after a month-long back-and-forth discussing several ideas.

Abstract

Collective and political violence in India has always been a pervasive phenomenon. While there is a lot of scholarship on events such as riots, a less researched manifestation of it has been on the rise—lynchings. Lynchings are defined as the extra-legal use of force by ordinary civilians to punish an alleged social or criminal transgression. Since 2015, India has seen a sudden surge in lynchings. Currently there is no data or scholarly research available that can make sense of this relatively recent form of collective violence in India. Therefore, this thesis will be a small contribution towards understanding lynchings in India. Looking at what happens after a cow related lynching, this paper will explain why the state is unable to control lynchings despite having a functional criminal justice apparatus. Using three cases that have been reported to the police, this thesis found that the police investigation process acts as a fault line, whereby if this stage is undermined and manipulated, the case can fall apart. It also hypothesises that a strong relationship between the police and vigilantes can lead to a complicit investigation.

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Introduction

In April 2017, Pehlu Khan, a dairy farmer, was transporting cattle on the Delhi-Jaipur highway and was stopped by a group of self-styled cow-vigilantes in the city of Alwar. Thinking that Khan would slaughter the cattle, the mob attacked him. Pehlu Khan succumbed to his injuries in the hospital two days later. The perpetrators were later acquitted, and a case was filed against Khan himself, posthumously, for cow smuggling (Hindustan Times, 2019).

Collective violence is a phenomenon that is not new to India. The most widely theorised and researched forms of violence in India are riots (Berenschot, 2019; Brass, 1997, 2003; Varshney, 2008; Wilkinson, 2004). Another form of collective violence has been on the rise in India, lynchings. Lynchings are acts of extra-legal violence by groups claiming to represent the will of the community to punish transgressions (Berg & Wendt, 2011; Jung & Cohen, 2020; Pfeifer, 2017).

Lynchings are a collective response to a supposed act of legal or moral deviance in the public sphere. Lynchings are inherently public and scholars such as Thurston (2013) even contend that for an event to classify as a lynching, it should not be motivated by private grievances but by a sense of public service. However, the state is the only legitimate authority that adjudicates between what is legal and illegal within a given polity; lynchings, then, undermine the authority of the state. Therefore, not only are lynchings explicitly illegal but they also challenge the authority of the state.

Though studying the motivations of the perpetrators of lynchings is beyond the current scope of this research, what can be studied is what happens once a lynching has occurred. Overall, there is a dearth of not just scholarship on lynchings in India but also

data. This is understandable due to two reasons; measuring cases of lynchings is difficult and lynchings are a relatively recent phenomenon.

This paper will attempt to fill this gap by doing a qualitative analysis using three cases of lynchings in India. Following the criminal justice mechanisms that are triggered after a lynching is reported, this paper will perform an in-depth analysis to understand why, despite having a functional criminal justice apparatus, the state is unable to control lynchings.

Understanding Lynchings as a phenomenon

Lynchings will be conceptualised as a subcategory of vigilantism (Moncada, 2017; Mortensen, 2018). Vigilantism can be broadly defined as the “extra-legal, prevention, investigation or punishment of offenses” (Bateson, 2020). Extra legality does not just mean that something is illegal, but that it goes beyond the law. For Bateson (2020) vigilantism cannot exist independent of an established state and an established legal order, because engaging in acts that go beyond the scope of the law presupposes the existence of said order.

Moncada (2017) conceptualises vigilantism as “the collective use or threat of extra-legal violence in response to an alleged criminal act”. Ray Abrams defined vigilantism as a phenomenon arising when groups decide to take the law into their own hands (Candy, 2012). Both Moncada (2017) and Bateson (2020) place vigilantism as a middle level concept on the ladder of generality. What this means is that as one goes higher up the ladder, the generalisability of a concept increases, along with the number of observations but this also increases the risk of conceptual stretching. Climbing up this ladder for vigilantism leads us to collective violence, which can be defined as violence

perpetrated by two or more persons with the intent of causing physical harm (Moncada, 2017).

Climbing down the ladder brings us to lynchings. Lynchings will, therefore, be studied within the broad framework of vigilantism. Lynching are the extra-legal use of collective violence perpetuated by ordinary civilians with the intention of punishing perceived offences against the community (Berg & Wendt, 2011; Jung & Cohen, 2020).

Studying lynching as a distinct form of vigilantism is crucial, as vigilante justice allows for lynchings to be justified to the community. Groups engaging in vigilantism are aware of the illegality of their actions but may feel obligated to justify the violence using the logic of vigilantism, which may be grounded in notions of self-preservation and popular sovereignty (Mortensen, 2018). Jung and Cohen (2020) argue that lynchings materialise when neither the state nor their rivals enjoy the monopoly over legitimate authority. However, studying lynching and vigilantism in such a context may limit the ability to uncover links between vigilantism and the state (Moncada, 2017).

Lynchings in the American South

The term lynching is most synonymous with the American South in the period immediately after the Civil War. The scholarship on lynchings in the American South is exceptionally comprehensive, covering almost all aspects of the phenomena. Therefore, it is important to discuss in brief what the state of the art here looks like and what theoretical lessons we can take from the literature.

Lynchings in the United States had three regimes; the “wild west” regime which was mostly whites against whites in areas with weak state penetration, the slavery regime where African-Americans were lynched by whites, and lynching of Mexicans along the border of Texas and Mexico (Seguin & Rigby, 2019). The second regime is the one that

had the most devastating consequences. After the revolutionary war and the abolition of slavery, the white population in the South were suddenly confronted with the newly liberated Black population of former slaves, who could now compete with them (Bailey et al., 2011; Makovi et al., 2016). When the white population felt threatened, especially in times of economic distress, lynchings were much more likely to occur (Tolnay & Beck, 1995)

Lynchings were also positively associated with declining cotton prices and the need for labour in counties that were dependent on cotton production. Indeed, geographically speaking, not only were lynchings more frequent in counties with cotton plantations but they were also clustered around counties that use to have higher rates of slavery (Seguin & Rigby, 2019; Tolnay & Beck, 1995). Additionally, counties with higher religious diversity and where a large share of the African American population attended black controlled churches saw high rates of lynchings. Whereas counties where the church had a racially mixed denomination saw a lower incidence rate as these associations experienced cross-racial solidarity (Bailey & Snedker, 2011).

The victims of such lynchings were overwhelmingly Black males who tended to be on the margins of society. Bailey et al., (2011) state that lynching victims were likely to be less rooted in the community and therefore it was unlikely that they would receive support or protection from their peers and were also economically marginalised in comparison with an average African American male.

However, this wave came to a sudden decline by the 1930s and this decline cannot be attributed to a decline in racism but to state intervention (Makovi et al., 2016). Indeed, scholars of lynchings in the US are now turning their focus on incidents of lynchings that saw interventions by agents of the state or trusted members of the community (Beck et al., 2016; Hagen et al., 2013; Makovi et al., 2016). State intervention was motivated by a

sense of declining authority over the use of legitimate force and to take the law back into the hands of the state. Hagen et.al. (2016) present an anecdote of James Vardaman, a former confederate soldier, and a white supremacist who, before becoming the governor of Mississippi in 1904, had overtly advocated for the lynching of African Americans. Since taking office, Vardaman had instructed state intervention to stop lynchings at least 9 times.

What motivated this change was that lynchings were incompatible with the vision of a modern and progressive *New South* (Beck et al., 2016). Lynchings represented traditional authority, whereas modernisation required the establishment of a Weberian state, where the state was the sole arbitrator. State intervention was seen more often in the counties that had manufacturing units which were capital intensive, whereas those that were dependent on cotton production saw lesser interventions (Beck et al., 2016). Essentially what this meant was that counties that more economically integrated with the North saw the sharpest decline in the incidence rate of lynchings. Therefore, when the opportunity structure of the state tilted against lynchings, the state had more incentives to intervene, and after peaking in 1890, lynchings began to see a steady decline (Beck et al., 2016).

While the story of lynchings in the United States might be highly idiosyncratic, there are a few lessons we can use for our study. Firstly, state intervention, rather intuitively, is crucial to curb such behaviour. Secondly, the role of local level actors needs to be analysed. Just like in the story of Vardaman, after a lynching occurs in India, there are a lot of different actors that can influence the post-lynching outcome. These local actors can play a critical role in either creating an environment of permissiveness and feelings of impunity for the perpetrators or can actively dissuade lynchings.

Collective Violence in India

Collective violence in India has been overwhelmingly dominated by one kind of sub-category – riots. Likewise, the scholarly attention given to riots has also been enormous (Berenschot, 2011; Brass, 1997; Varshney, 2008; Wilkinson, 2004).

Paul Brass (1997; 2003) argues that incidents are not always inherently communal, but their transformation into a communal or ethnic incident is dependent on the attitude that local elites take towards them. This transformation is undertaken by what Brass (1997) coined as *Institutionalised Riot Systems*, where agents specialise in converting seemingly trivial events between members of different communities into communal incidents. This network consists of agents who ensure that ethnic and communal relations remain in a state of conflict. These networks are informal, with no regular meetings, membership is fluid and known individuals usually act as leaders (Brass, 1997). Berenschot (2011) offers another explanation of the role that such networks play in instigating violence, where Institutionalised Riot Systems are in fact versatile networks of patronage, and fomenting violence is not what motivated their creation.

Analysing the pattern of violence that broke out in Gujrat in 2002, Berenschot (2011) argues that if citizens in a locality are dependent on state jobs and resources for their livelihood, then this interaction is facilitated by intermediaries. Their dependence on such mediation motivates the interests and capacity of politicians to instigate ethnic violence. These patronage networks are essentially established to help people navigate state institutions, and these networks are ultimately the ones used to organise and instigate communal violence by political leaders (Berenschot, 2011)

Looking at the relationship between elections and communal riots in India, Wilkinson (2004) argues that political leaders and the state will only stop the violence if

they have the electoral incentives to do so. If parties are dependent on minority support, then they have incentives to protect minorities and maintain peace, and if parties do not require the support of minorities, then the state has no incentives to stop the violence. For Wilkinson (2004), these incentives interact at two levels to determine whether the violence will be mitigated; at the local level and at the level that controls the state's law enforcement apparatus. It is this second level, those who control the police, that is crucial in determining whether violence will be mitigated. (Wilkinson, 2004). At the local level, Wilkinson (2004) argues that parties need to ensure that the identity that benefits their party the most is the one that is the most salient in the minds of the electorate and violence usually aids with that. It is at the second level that parties will protect minorities if it benefits them electorally.

While these explanations place institutions and political elites at the centre of their arguments, Varshney (2002) moves the attention towards the structure of civic life in districts to explain the outbreak of ethnic violence. Looking to explain the variance in the outbreak of violence in cities with similar demographics, Varshney (2002) argues that existing networks of civic engagement between communities are the key causal factor that explain why one city experiences riots and the other does not. If a district or city experiences inter-communal civic engagement whether in everyday life or through more formal associations, then the likelihood of communal violence is significantly lower as compared to cities where there is no inter-communal engagement.

Research Design and Methodology

To understand the recent surge of lynchings in India, a qualitative case study will be conducted. Due to the lack of reliable data on lynchings, a quantitative analysis was ruled out. The goal of this research is to understand and make sense of the mechanisms

that unfold after a lynching incident. Given the limited resources available for primary research, I will not be investigating the factors that drive people to engage in lynchings.

Since lynchings are a relatively new and understudied phenomena in India, a qualitative research will help us understand and unpack the surge of lynchings in India. Specifically, this study will engage in a comparative analysis within the case of India, where three incidents of lynchings will be chosen for further research. To do this, I use Jung & Cohen's (2020) conceptualisation of a lynching where they define it as an extra-legal and lethal form of collective violence committed by ordinary individuals with the intention of punishing offenses to the community.

In the Indian case, skimming through a few newspapers reports on several lynchings indicates that while an overwhelming number of lynching victims are Muslims, most times, the perpetrators (when found) seem to be Hindus. Broadly, lynchings in India are mostly being reported against minorities; women, lower caste individuals or Dalits and religious minorities who are predominantly Muslim (The Quint, 2018). In specific, one kind of violence has been the most common – lynchings related to the consumption, slaughter or smuggling of cows. As indicated by the case of Pehlu Khan, groups of people have been proclaiming themselves as cow vigilantes or *gau rakshaks*. Cows are sacred and holy for Hindus and their consumption or slaughter is deemed immoral, and these vigilante groups have taken it upon themselves to punish individuals (a majority of whom are Muslims or Dalits) who they suspect of violating the normative values of Hinduism.

The cases chosen are all incidents of beef lynchings, where individuals are lynched by self-styled Hindu cow vigilantes who accuse the victims of either smuggling, slaughtering, or stealing cows, illegally.

Three cases have been further narrowed down based on their status in courts. In the case of Pehlu Khan, the trial has been concluded by the district court, and all suspects

were acquitted. In the second case of Rakbar Khan, the case is still in the district court, and has been in trial since September 2018. In the third case, Alimuddin Ansari was lynched in 2017 and the court convicted the accused. In all the cases, the victims were Muslim. In case 1 and 2, the lynchings happened in the district of Alwar, Rajasthan and were tried by the same court and the same judge but saw drastically different timelines. The third case comes from Ramgarh in the state of Jharkhand and is the only case in recent years to result in a conviction, to the best of the author's knowledge. Additionally, these cases also received widespread media coverage and therefore data regarding them is more easily accessible.

Based on this case selection, this paper will study the cases in-depth to understand and uncover overarching mechanisms in these three cases to make sense of the permissiveness that surrounds incidents of lynchings in India using the following process as a general guideline.

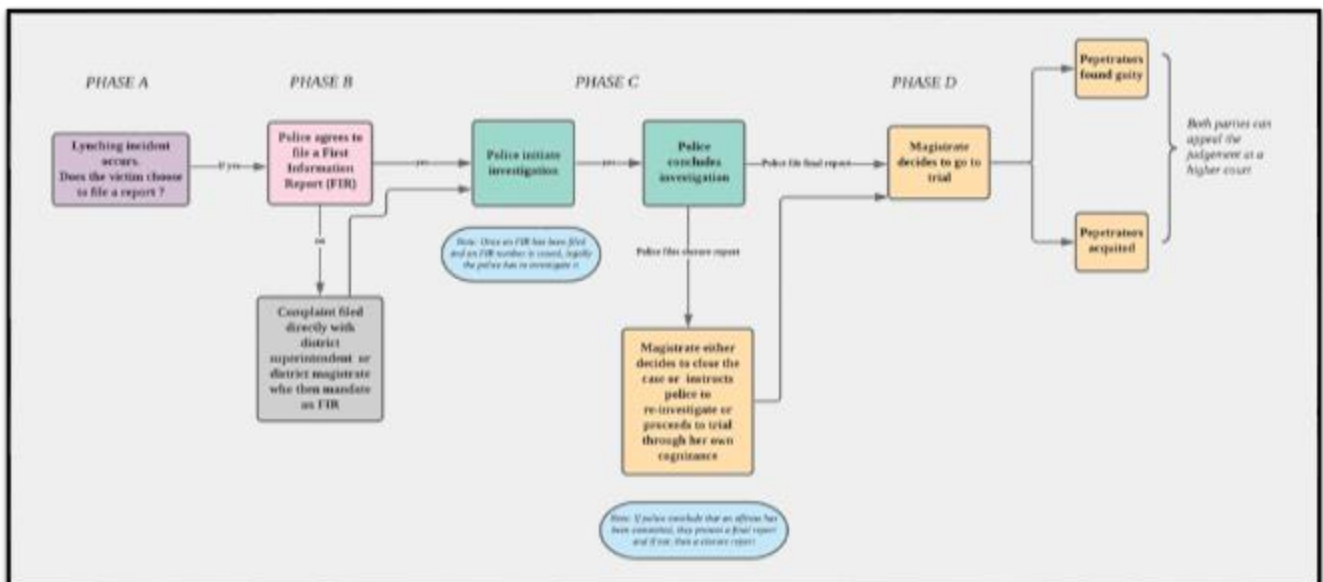


Figure 1: Criminal Justice Process

Specifically, this process will act as a checklist through which every case will be studied. The assumption here is that there is something in this process which acts as the fault line, where perpetrators or people pre-disposed to engaging in lynching incidents feel that they can get away with committing a crime.

The state can intervene in two ways, (1) prevention and (2) deterrence, and it is the latter that is the focus of this study. The underlying assumption here is that if the state is not making a conscious effort into bringing the victims to justice, then the implicit signal it sends is that lynchings of a certain kind will be tolerated. In the American South, state intervention was more focused around preventing either threatened lynchings or intervening in an on-going lynching (Beck et al., 2016; Makovi et al., 2016). A 2017 report by the Equal Justice Initiative entitled, “Lynching in America: Confronting the Legacy of Racial Terror” suggests that white people were rarely convicted for lynchings, and after 1900, only in about 1% of the cases were perpetrators convicted of committing a criminal offense. In India, one report from Outlook India, a news magazine, claims that lynchings have a conviction rate of only 16% (Vashishtha and Pachauri, 2020). Keep in mind, if we consider this number reliable, that these include all kinds of lynchings and not just cow related incidents. The third case being studied in this paper will also help us understand what it takes for individuals to get convicted of lynchings.

Therefore, by looking closing into three cases of lynchings, this paper will provide a small but much needed insight into the aftermath of a lynching. To conduct this analysis, data was collected from online archives of newspapers, online news platforms, NGO and think tank reports, and court judgments/documents accessed using the Indian e-Courts online platform. By dissecting the state response to lynchings, this

thesis will contribute to the understanding of lynchings in India and to the vast literature on collective violence and ethnic conflict in India.

Background

Part IV of the Indian Constitution outlines the *Directive Principles of State Policy*, which were created by the Constituent Assembly as policies that the state should keep in mind while formulating laws. These articles of the constitution are not legally enforceable by any court. Article 48 of the Constitution pertains to agriculture and animal husbandry and mentions the following;

“The State shall endeavour to organise agriculture and animal husbandry on modern and scientific lines and shall, in particular, take steps for preserving and improving the breeds, and prohibiting the slaughter, of cows and calves and other milch and draught cattle” (The Constitution of India).

While there is no national law banning cow slaughter, several states have enacted laws criminalising bovine slaughter, consumption, trade, etc. (Citizens Against Hate, 2017).

The cases that will be analysed in this paper occur in two states, Rajasthan, and Jharkhand, both of whom have implemented bovine related legislations. Cows in particular are considered sacred under Hinduism, and therefore all these laws have been formulated to protect bovine animals under the aegis of adhering to Hindu values. While legally India is a secular state, a majority of the population follows Hinduism. Two of the cases being analysed come from the Alwar district in Rajasthan which falls under the Mewat region, split across the states of Haryana and Rajasthan. The Mewat region has a significant population of Meo Muslims, a community of Muslim Rajputs who converted from Hinduism to Islam around the 15th and 17th centuries (Mehrotra, 2018). This

community has been engaged in cattle rearing for several hundred years, but in the recent years have seen a spate of lynching attacks against cattle farmers from their community. Pehlu Khan and Rakbar Khan, whose cases have been detailed in the following sections, are the most prominent examples of this.

The rise of lynchings in India also must be understood within the political discourse that exists today. Violence related to beef has been a feature in Indian society for decades, often as a manifestation of Hindu-Muslim violence. The Varshney Wilkinson Dataset on Hindu-Muslim Riots 1950-1995 (2004), which was extended until 2006 by Sriya Iyer and Anand Shrivastava, has 32 incidents where cow slaughter led to a riot. In addition to this, data collected by The Quint (2018), an online news agency in India, reports over 30 incidents of cow related lynchings just between 2015 and 2019. This spate of lynchings has coincided with the election of the Bhartiya Janata Party to power in 2014. The BJP, led by Prime Minister Narendra Modi, is a Hindu nationalist party that was born out of a militant voluntary organization called the Rashtriya Swayamsevak Sangh or the RSS. The BJP and RSS believe that India is the land of Hindus and members of these organisations, including elected officials have been known to support persons who engage in cow vigilantism (Varshney et al., 2021).

It should be noted that beef lynchings are not the only kind of lynchings that happen in India. This period saw a general rise in lynchings against minorities for a variety of reasons. For example, Dalits have been lynched for social transgressions that are often trivial in nature (Khare, 2019), women are often lynched on allegations of witchcraft (Hindustan Times, 2020), and several lynchings motivated by allegation of child-kidnapping have also occurred (BBC, 2018).

Case Studies

Before we delve into the details of the three cases being analysed here, it is important to discuss a disclaimer. The cases have been selected from pool of samples that were all reported to the police and media. They were selected after surveying online news articles, and media outlets are likely to hear of cases through police reports. Therefore, the pool that the cases have been selected from may not be fully representative of all the lynchings in India. There are also lynching incidents that we may not hear of because an FIR was not filed with the police.

Another point to note is that the data sources being used here are a combination of factual reports and discourses. While newspapers cover basic updates related to the cases, it was online news agencies in India and organizations such as the BBC who did a deep dive into the cases which included fieldwork, opinion pieces, analyses, etc. Such data sources, however, are scarce, and usually entail the same journalists covering a case over the years. In addition to this, reports from civil society organizations who have been following the cases have also been used.

Alwar, April 1st, 2017

In April 2017, Pehlu Khan was transporting cattle on the Delhi-Jaipur highway with four other people and was stopped by a group of self-styled cow-vigilantes in the city of Alwar in North India (Hindustan, 2019). Despite having documentation proving that he was a dairy farmer, he was dragged out of his vehicle along with his companions and beaten by a mob, as they believed the group were going to slaughter the cattle. Pehlu Khan succumbed to his injuries in the hospital two days later (Saini & Mukherjee, 2017). A Hindustan Times (2019) report stated that a First Information Report (FIR) was filed against 6 individuals who were named by Pehlu Khan himself, right before he succumbed

to his injuries, and 200 other unidentified persons. An FIR was also launched against Pehlu Khan and his sons for cow smuggling under the Rajasthan Bovine Animal (Prohibition of Slaughter and Regulation of Temporary Migration or Export) Act, 1995 (The Hindu, 2019). The latter FIR was only nullified by the Rajasthan High Court in October 2019 based on lack of evidence of cow slaughter (The Hindu, 2019).

Investigation

The cow vigilantes were reportedly associated with the Vishwa Hindu Parishad or VHP (World Hindu Council) and their youth wing the Bajrang Dal (Scroll, 2017). According to their website, the VHP aims to “consolidate the Hindu Society” and to serve and protect the Hindu religion. However, the VHP is widely known to be a right-wing extremist organisation with the Bajrang Dal as their militant wing. The VHP is a known affiliate of both the RSS and the BJP (Biswas, 2020), the latter of which were in power in Rajasthan when Pehlu was lynched.

A video later emerged of the lynching after which the police arrested three other individuals who were not mentioned in the FIR on April 5th and three days later, they arrested two more individuals in connection with the lynching (Hindustan Times, 2019). As the investigation continued for the next few months, several of the accused were granted bail and the investigating officer was changed at least four times (Anjana Prakash, 2019; Hindustan Times, 2019). The case was also transferred to the Crime Investigation Department – Crime Branch (CID-CB), who later sent a probe report to the Alwar police clearing the names of the original six accused persons named by Pehlu Khan in the FIR and charged nine other persons with murder (Hindustan Times, 2019). The trial began almost a year later on May 10th, 2019 at the Alwar District Court and lasted for 24

hearings until the final judgement on August 14th, 2019, where the judge acquitted the seven persons put on trial (Prakash, 2019).

Trial

Amir Aziz, an advocate at the Rajasthan High Court who was involved in the case told The Wire that Pehlu's dying declaration where he named the six accused was never attested to by the doctor on-call and therefore was considered inadmissible in court (Jain, 2018b). These individuals were absconding up until the CID-CB exonerated them, and therefore were never brought into either police or judicial custody (Prakash, 2019).

A former judge of the Patna high court and a senior advocate at the Supreme Court of India, Anjana Prakash (2019) explains that the case was being supervised by District Additional Superintendent of Police (SP) Jaipur, Ramswaroop Sharma, who stated that the case against the six original persons from the FIR was sufficient and the case against the accused not mentioned in the FIR needed further investigation. This conclusion was to be sent to the Inspector General of Jaipur but was instead sent to the Crime Branch Additional SP, Govind Detha. Detha further interrogated the six accused and was convinced that they were in fact not present at the location of the lynching but were at a cow shelter (Prakash, 2019). On the basis of Detha's judgement, the accused mentioned in the FIR were exonerated. Detha and Sharma arrived at contradictory conclusions, yet the former's judgement was given primacy and a plea of innocence was filed in court and subsequently accepted by the judge on account of the accused having an alibi. According to Prakash (2019), the courts are required to independently decide a person's innocence or guilt based on the evidence presented before the court, but the fact that the six accused in the FIR were never presented before the court to prove their innocence raises doubts over the fairness of the process.

The persons who were subsequently put on trial were not the ones mentioned in the FIR but nine persons including two minors who were arrested by the police based on the videos and photographic evidence (Prakash, 2019). During the trial, the prosecution presented 44 witnesses, 4 of whom were Pehlu Khan's companions and were also injured during the attack (Prakash, 2019). The four other victims all named the accused persons from the FIR consistently and they contend that they also mentioned the six in their statements to the police during the investigation but say that the police omitted the names of the six accused (Prakash, 2019).

Giving the final judgment, Additional District and Sessions judge Sarita Swami, acquitted the accused, giving them the benefit of the doubt as the court found inconsistencies in the police investigation and the evidence presented by the public prosecutor (Salam, 2019). The court additionally refused to accept the videos as admissible evidence as they were never certified by the forensic laboratory nor were the mobile phones from which they were recorded ever seized or located (Salam, 2019; Mander, 2019).

Harsh Mander (2019), a former civil servant and human rights activist writes that the police were determined to subvert the investigation and subsequent trial against the accused and that the case against the accused shambled "because it was designed to do so". It should be noted that at the time of the lynching, Rajasthan was ruled under a BJP government, where the state's Home Minister, Gulab Chand Kataria, had himself claimed that cow vigilantes are merely trying to stop crimes such as cow smuggling (Mander, 2019).

Post-Trial

In December 2018, Rajasthan elected a new government under the Indian National Congress and voted the BJP out of power. The new government appealed the acquittal of the accused persons in 2020, before the Rajasthan High Court and but the case has not been heard in court yet (Jain, 2021).

It is clear that the police were complicit in trying to subvert justice, but whether the district court can be added to the list is difficult to determine. The prosecution is incredibly dependent on the evidence collected by the police, and therefore if the evidence is shallow, then it is that much easier for the judge to acquit the accused.

Alwar July 21st, 2018

Rakbar Khan, a dairy farmer, and his companion, Aslam Khan had purchased cows that they were transporting by foot, when they were attacked by a group of men in a farm also in Alwar, Rajasthan who believed that the duo was smuggling cows (Jain, 2019). While Aslam escaped, Rakbar was beaten to death. James Clayton (2019) reports that there are three versions of the story. Aslam believes that Rakbar was killed at the site of the attack, whereas both the police and the local cow protection group blamed each other.

Contrasting Stories

According to Clayton (2019), the stories of both the police and the cow protection group revolve around Nawal Kishore Sharma, the leader of the local *gau raksha dal* (cow protection group). The FIR states that Sharma, called the police at 00:41 informing them of two individuals smuggling cows. When the police arrived at the scene, they found a severely injured but alive Rakbar lying in the mud (Clayton, 2019). The police asked for

his name, age, father's name, and village, and Rakbar was then taken to the hospital where he was declared dead on arrival (Clayton, 2019).

Here's where this narrative starts to fall apart. Clayton (2019), who went to the hospital and spoke to the doctors, reveals that in the morning of July 21st, only one dead body was brought to the hospital and their records state that it was an "unknown dead body brought by the police". In addition to this, Rakbar was brought into the hospital at 4:00am, almost three hours after the police arrived at the scene, while the hospital was only a 12-minute drive from the location (Clayton, 2019). In the meantime, the local gau rakshaks centre reports that the cows arrived at the shelter at 3:26am (Clayton, 2019). The police have not clarified why it took them so long, nor why they admitted him as an unknown person.

Sharma's claims that the police changed Rakbar's clothes, took pictures of him and beat him up at the police station before taking him to the hospital (Clayton, 2019). In Sharma's version, Rakbar was alive when he left to take the cows to the shelter and was informed of Rakbar's death upon his return by the police. Clayton (2019) also spoke to the doctor who was on call the night Rakbar was brought in and the doctor remembers the body being cold, indicating that Rakbar may have succumbed to his injuries hours prior to being taken to the hospital.

Investigation

Shruti Jain (2019) of The Wire writes that the chargesheet filed by the police states that the attack was pre-planned, and that the accused were waiting in the fields for Rakbar and Aslam. Aslam, in his statement, said that one of the men assaulting Rakbar took the names of Nawal Kishore himself and three others who claimed that the local member of the legislature, Gyan dev Ahuja, was with them and nothing would happen. Those three

were arrested on the spot (Jain, 2019). Aslam also states he heard them say that Rakbar died, and Sharma should call the police. All the men mentioned above were eventually put on trial except Nawal Kishore Sharma, who, according to the chargesheet, was contacted after the assault (Jain, 2019).

Therefore, Aslam claims that Rakbar died at the assault site, Sharma says that when he left Rakbar with the police he was alive and that the police beat him up which caused his death, and the police say he was taken straight from the assault site to the hospital (Jain, 2019).

Additionally, one of the accused was associated with the VHP, and Nawal Kishore is and was the leader of the cow protection cell run by the VHP (Jain, 2019). Despite this, there was no investigation against Sharma, until 2021. The Indian Express reported that Sharma was finally arrested on June 17th, 2021 on the charges of criminal conspiracy related to cow vigilantism after the police found more evidence and concluded that Sharma had been misleading the police by pretending to help them, according to the Special Public Prosecutor (Khan, 2021).

Allison Joyce, a photographer, spent an evening with Sharma and his vigilante group and took a picture of Sharma and a police officer embracing, following a shootout between a suspected cow smuggler and the vigilantes. Indicating that even though the police and vigilantes blame each other in the case of Rakbar, they presumably still have a close working relationship (Clayton, 2019).

The Trial

According to the records found on the E-Courts online database operated by the Government, the chargesheet was filed by the police in court on 26th September 2018, and the first hearing happened the following day on September 27th. This case is also

being heard by the Additional District and Sessions Court under Judge Sarita Swami.

The Wire (2021b) reported that Rakbar's family had filed an application with the District and Sessions Judge of Alwar, Sangeeta Sharma to transfer the case to another court as they accused Judge Sarita Swami of being biased towards the accused. Judge Swami is also the one who acquitted the persons accused of lynching Pehlu Khan. Though the application was refused as Judge Sharma said she has no jurisdiction to transfer cases (The Wire, 2021b). In February 2021, the Rajasthan government appointed another Special Public Prosecutor to argue Rakbar's case (The Wire, 2021a). The case, however, is still in court and the next hearing is scheduled for 17th July 2021.

The case, as described in the chargesheet and during the trial is straightforward and whether the police or the vigilantes were responsible for Rakbar's death, it is safe to assume that, intentionally or not, both their actions contributed to his death. It is difficult to make many assumptions about the judicial process until the final judgement is released but analysing everything we know so far, the fault line again can be attributed to the police investigation. Judicially, the only thing that stands out is the drastically different timelines that Pehlu's and Rakbar's cases had.

Ramgarh 26th June 2017

Alimuddin Ansari, a meat trader, was transporting beef when his van was stopped in Ramgarh, Jharkhand by a group of cow vigilantes, which included the local media head of the BJP, and was beaten to death (The Wire, 2017; Pandey, 2017). He was reportedly rescued by the police and taken to the hospital where he died soon after. The Indian Express, a national English language daily, reported that the Additional Director General of Police or ADG (Operations), RK Mullik stated that the murder was pre-meditated and made to look like a lynching and that the perpetrators often extorted money from people

engaged in the trade of beef (Pandey, 2017). The lynching happened hours after Prime Minister Modi made a statement condemning cow vigilantism, emphasising that no person should take the law into their own hands (The Wire, 2017). The trial lasted for 6 months, from August 22nd, 2017 until March 3rd, 2018, and 11 out of 12 accused were sentenced to life imprisonment (Dhingra, 2018). The charges were filed in a fast-track court which is why this case saw a speedy trial.

The Investigation

Soon after the lynching, the police subsequently filed an FIR against 10 persons who had been identified. Police ADG Mullik also stated that the perpetrators followed Alimuddin before attacking him and were in contact with each other between 7:30 and 9:30 on the day of the assault, constantly updating each other of Alimuddin's location (Pandey, 2017; Dey, 2017). Additionally, a report by Citizens for Justice and Peace, a human rights organisation in India, reported that a member of the Bajrang Dal was among those involved in the attack and had called on other members of the group after he suspected Alimuddin of possessing beef (Grey, 2017)

According to The Print, an online news agency in India, the superintendent of Police (SP) of Ramgarh, stated that they were determined to bring Alimuddin justice at the earliest (Dhingra, 2018). The Print also reported that the Jharkhand High Court had been asked by the state government to constitute a special fast-track court which would be presided over by Additional District Judge, Om Prakash, who oversaw the case from start to finish (Dhingra, 2018). Public Prosecutor Sushil Kumar Shukla told The Print that the court was instructed to conduct daily hearings (Dhingra, 2018). Shukla also stated that not only did the police and public prosecution show clear intent, but the local administration also cooperated to bring about the conviction (Dhingra, 2018).

A police officer, who wished to remain anonymous, told The Print that there was significant pressure from the government to ensure justice, and Shukla believes that this was due to the statement Modi made just hours prior to the lynching incident. A special investigation team (SIT) was promptly formed, and the accused persons were arrested, including the local media manager of the BJP (Dhingra, 2018). Shukla also told the print that they made sure to authenticate all the material evidence they collected to not undermine the case against the accused (Dhingra, 2018).

Trial

However, not everything went swimmingly, The Caravan reported that the wife of the only eyewitness had to go back home to get her husband's identification card for the hearing and met with a road accident on the way and ultimately died (Sagar, 2017). Her husband, Jaleel eventually did not end up giving his statement in court and filed an FIR with the police contending a conspiracy to kill his wife. Jaleel said that companions of the accused were often present in court and would threaten him and his wife against giving their testimonials (Sagar, 2017).

The prosecution presented 15 witnesses while the defence presented just 1, and after hearing both sides of the case, Judge Prakash found 11 out of 12 guilty of the death of Alimuddin and charged them under several sections of the Indian Penal Code (Tewary, 2018). The court gave the accused persons a life sentence and a fine of rupees 2000 each and ordered the district services legal authority to compensate the victim's family adequately (Tewary, 2018). However, in June 2018, The Indian Express (2018) reported that 8 out of 11 convicted persons had been granted bail by the Jharkhand High Court.

The case of Alimuddin is a useful example of the central role of the police in ensuring that persons accused of lynchings are brought to justice. However, it also

illustrates how dependent a prosecution case is on the law enforcement and state institutions in helping them convict someone.

Analysis

The cases described above have provided a detailed overview of what happens after a lynching occurs, specifically after a case is filed by the police. The following section will assess the response of the state institutions to understand why lynchings continue to remain unabated in India. Firstly, the role of the police in the investigation will be discussed. Secondly, it will discuss the characteristics of the perpetrators and the role that local networks play. Lastly, the relationship between local networks and the police will be analysed.

The Fault Line: Police Investigation

All the cases discussed in this research broadly followed the process outlined. Formally, it can be said that due process was given but an in-depth analysis such as the one here, suggests otherwise. Looking at all three cases, the police can be found at the centre of each case and as such the fault line is located in phase C. For Pehlu, the police were responsible for a shallow and sub-standard investigation and in Rakbar's case, the police may potentially have been responsible for his death, directly or indirectly. While in the case of Alimuddin, a prompt and competent response from the police is ultimately what led to his killers being convicted.

The police in any Indian state are controlled by the state government, everything from appointments to transfers and therefore the law enforcement apparatus experiences significant political interference. The Status of Policing in India Report 2019 published

by the Centre for the Study of Developing Societies (CSDS) in Delhi, suggests that one in three police personnel experience political interference, and 28% of personnel consider political interference the biggest barrier while investigating a crime. It is therefore safe to assume that these cases were also subject to political pressure.

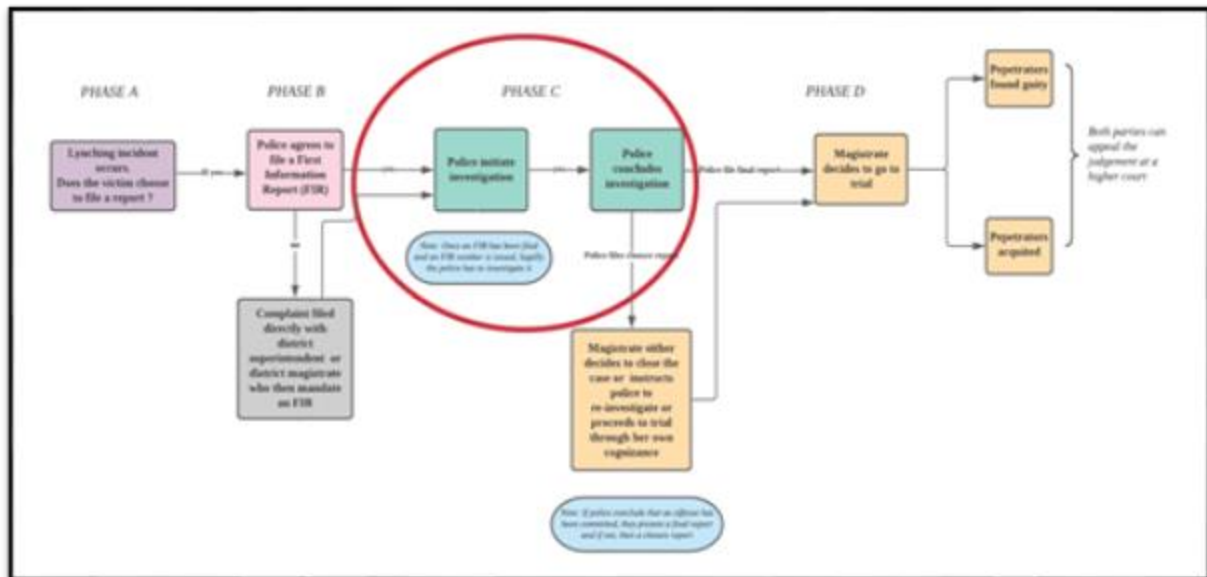


Figure 2: The Fault Line

For example, in Rakbar's case, at the time of the lynching, the BJP governed the state of Rajasthan and the local elected representative of Alwar, Gyan dev Ahuja, is a known sympathiser of cow vigilantes. Therefore, the entire investigation happened under the aegis of the BJP government. During this time, the police never suspected Nawal Kishore Sharma, the leader of a cow protection cell. In 2019 the Congress was elected and in 2021 Nawal Kishore Sharma was arrested for his role in cow vigilantism after the police suddenly uncovered additional incriminatory evidence (Khan, 2021). While we cannot be certain that Kishore's arrest was driven by a change in government, the political interference in criminal cases is, in general, undeniable, and therefore, is one of the factors that could influence the direction a case takes. In other words, a change in incentives for the government could motivate them to take a more proactive stance while dealing with

lynching cases. Similarly to the American South, lynchings saw a decline in counties when the incentives changed for political leaders (Beck et al., 2016).

Both Pehlu and Rakbar's cases have now been taken up by the Rajasthan government under the Congress Party's rule, indicating that even though the police are a key factor in making or breaking a case, it is safe to assume that they do not operate entirely out of their own free will.

Though the nexus between the police and the politicians can work both ways, where the police may already have biases towards certain communities and the politicians merely act as precipitating factors. The 2019 CSDS report also surveyed the opinion of police personnel towards mob violence. Their results indicate that one in every three police personnel think it is natural for a mob to punish those engaging in cow slaughter, (CSDS, 2019, p. 126). In other words, about 35% believe that it is natural for a mob to attack persons engaging in cow slaughter. Additionally, the report also found a significant bias against Muslims among police personnel, where half of the respondents believed that Muslims are more naturally prone towards engaging in violence (CSDS, 2019)

Regardless of whether the police experience political pressure or not, it is clear that the police can de facto decide the fate of a case. To summarise this, there is clear indication that the fault line lies with the police investigation phase of a case, and the way the police handles a case is influenced by either the nature of political interference they experience or on their own biases or a combination of the two.

However, if the police are biased, why does this manifest in phase C and not phase B (registering an FIR). Theoretically, the bias should manifest at all stages where the police are involved. While this is not something we identified here, it is mostly due to the fact that the cases were selected from a pool of incidents where FIRs were filed. This does not mean that there are no cases where the FIR was not filed but simply, we do

not hear of them. To understand why we do not see a bias in phase B, let us delve into the criminal justice system in India briefly. The FIR is an informational document communicating to the police that a cognizable crime has been committed, i.e., a crime where the police can make arrests without a warrant, according to the Criminal Procedure Code (2)(c). Its registration is not contingent on the credibility or reasonableness of the information but must assert the occurrence of a cognizable offense (Mavarkar & Venumadhava, 2021). The FIR sets the Indian criminal justice system into gear. If the police refuse to do so, not only is that illegal but petitioners can approach the court to direct the police to file one. The FIR, however, should not be taken as gospel. Its role is to inform the police the primary information the petitioner has about a crime and from there the police begin the investigation (Mavarkar & Venumadhava, 2021).

Given what we know how the cases and how FIRs work, perhaps one can theorise that if the police are biased, they may file an FIR for procedural reasons in order to maintain a façade of legality. As they know that once the FIR has been filed, the onus shifts on them to investigate the crime, which subsequently can be distorted and undermined by them. At least by filing the FIR then, they can claim that they followed procedure. The thing that then needs to be explained is the refusal of the police to file an FIR in the lynching cases that are not on our radar. This is similar to what we can speculate about the judiciary; the fault line was not traced to phase D because judges are ultimately dependent on the nature of the evidence produced before them. Essentially it does not matter if the judiciary is complicit or not because they can only decide a case based on the evidence the prosecution produces, and therefore the police complicity is enough for the criminal justice system to be distorted.

Role of Local Networks

The role of local networks in fomenting ethnic violence in India has been theorised extensively. Whether they are institutionalised riot networks, patronage networks or social networks (Berenschot, 2011; Brass, 1997; Varshney, 2008). The analyses of the cases in this paper also indicates the influence of local networks in committing lynchings. In all the cases, local members of organisations such as the VHP and its subsidiary Bajrang Dal, and members of cow protection cells often operated by said organisations were involved. All cases indicate that there was some level of planning involved and these lynchings were not in fact spur of the moment or sudden attacks but in most cases, the perpetrators knew about the victims. It is well theorised the role that networks play in organising and sustaining ethnic violence and therefore their involvement in lynchings is hardly a surprise. While these networks are not constituted for the sole purpose of lynching individuals, their pre-existing infrastructure definitely gives them an edge when they do decide to engage in lynching.

Relationship Between Police and Local Vigilante Network

Another interesting factor is the possible relationship between police and local networks. The districts surrounding Ramgarh in Rajasthan have several checkpoints set up by the police or cow vigilante groups or often by both together, according to reports in the BCC by James Clayton (2018) and Soutik Biswas (2015). A policeman told Biswas that they consider cow smuggling to be a serious issue and often cow protection networks aid them in that effort (Biswas, 2015). Both Biswas (2015) and Clayton (2018) interviewed Nawal Kishore Sharma, known to have close ties with the police, who told the two journalists on separate occasions, Biswas before Rakbar's lynching and Clayton, after, that his group does not act without informing the police and the police usually defends them and ensures their safety. Therefore, it is safe to infer that the cow vigilante

groups in this region of Rajasthan have close ties with the police and perhaps in both Pehlu's and Rakbar's cases, the police and vigilante group, were to an extent, in conjunction with one another. The simple fact that Sharma was only arrested three years after the crime when the government changed provides support for this claim. One can also speculate that the nature of the relationship between the police and the cow vigilantes in a district can influence the state of the police investigation.

We know that in the case of the Pehlu Khan that the investigation was incompetent and shallow, and in the case of Rakbar Khan, while the investigation did not see too many hurdles, it took the police around three hours to get Rakbar to the hospital and they still provide no clear explanation for this lapse. While we are yet to see Rakbar's judgement, the acquittal of Pehlu's attackers could have been a consequence of the relationship the vigilantes shared with the police. In Alimuddin's case, while the relationship between the police and the vigilantes remains unclear, the police investigation was comprehensive and therefore this remains the only conviction in a lynching case. Therefore, we can hypothesise that; *A strong relationship between the local police and the cow vigilantes leads to a complicit police investigation.* We can also conclude that a strong relationship does not lead to a complicit judiciary or the non-registration of an FIR.

Conclusion & Discussion

Using three incidents of lynchings, this paper has presented a layered analysis to dissect the response of state institutions in India. Overall, it has argued that the fault line, the stage in the criminal justice process where the problem can be traced back to, is phase C. This process of the police investigation becomes vulnerable to either the personal biases of the police or to political interference and can lead to a complicit investigation. The inferences drawn from the cases indicate that the bias only manifests itself in phase

C and not phase B, although this is most likely the result of a case selection bias which will be discussed later in this section. An additional layer to this conclusion is the relationship between the police and the cow vigilantes. It can be argued that when the police and the vigilantes have a close relationship, the police may have an added incentive to subvert phase C.

What is interesting about this is that the state and its institutions hold the monopoly over legitimate force, and logically incidents of popular justice that diminish this monopoly should not be tolerated. What we see here is that the police in fact enables vigilantism if they subvert the investigation, diminishing their monopoly over force. Seeing how the police operate and the relationship they might have with vigilante groups, it can also be argued that such behaviour is bottom up, and not something planned by the political elite, of course they may benefit from it, but it is not something orchestrated by politicians.

These inferences, however, have their limitations. It is based on an analysis of three cases chosen on the basis of a criteria, which brings bias into the analysis. There are two issues here, one, that the cases may not be representative of the pool they were selected from. Secondly, since cases were selected from a sample of reported cases, there are lynchings that we never hear about because they go unreported. There is a risk of bias with any small-N qualitative research as the case selection cannot be random, but the benefits of this research outweigh the bias. Lynchings in India have not been given much scholarly attention and therefore this research has tried to scratch the surface and provide a minuscule but much needed theoretical contribution to this knowledge gap. A qualitative research such as this allows us to explore a new phenomenon and then generate potential theories to understand it.

This paper adds to the vast literature that exists on collective violence in India but

also contributes to understanding a relatively new manifestation of it. There are several avenues for further research; conducting a theory testing research to see if the relationship between the police and vigilante networks works in the way it is hypothesised would be a natural next step. Another avenue that has not been discussed in this paper at all are the motivations that drive lynchings, and what these lynchings represent in an increasingly populist political context. Quantitatively, a robust and thorough dataset that not only includes beef lynchings but all variations of lynchings in India would be a great contribution to the field.

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