

# **ADDRESSING MOB LYNCHING: THE NEED FOR NEW LEGISLATIVE MEASURES**

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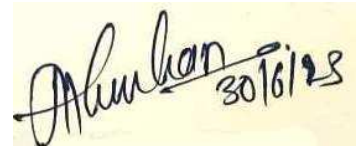


National Law University and Judicial Academy, Assam

(June 2023)

## CERTIFICATE

This is to certify that ARINDAM BAISHYA has completed his dissertation titled **“ADDRESSING MOB LYNCHING : THE NEED FOR NEW LEGISLATIVE MEASURES”** under my supervision for the award of the degree of MASTER OF LAWS / ONE YEAR LL.M DEGREE PROGRAMME of National Law University and Judicial Academy, Assam.



Date: 30<sup>th</sup> June, 2023.

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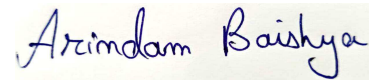
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## DECLARATION

I, ARINDAM BAISHYA, do hereby declare that the dissertation titled “ADDRESSING MOB LYNCHING: THE NEED FOR NEW LEGISLATIVE MEASURES” submitted by me for the award of the degree of MASTER OF LAWS/ ONE YEAR LL.M. DEGREE PROGRAMME of National Law University and Judicial Academy, Assam is a bona-fide work and has not been submitted, either in part or full anywhere else for any purpose, academic or otherwise.

Date: 30<sup>th</sup> June, 2023.



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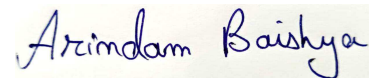
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Date: 30<sup>th</sup> June, 2023



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## **TABLE OF STATUTES**

### **INDIA**

1860- Indian Penal Code

1949- Constitution of India

1951- Representation of Peoples Act

1955- Protection of Civil Rights Act,

1973- Criminal Procedure Code

1987- Legal Services Authorities Act

1988- Religious Institutions (Prevention of Misuse) Act

1995- Cable Television Network Regulation Act

### **USA**

Dyer Anti Lynching Law 1918

Civil Rights Act 1964

## TABLE OF ABBREVIATIONS

<b>Sr. No.</b>	<b>Abbreviation</b>	<b>Explanation</b>
1.	ACP	Assistant Commissioner of Police
2.	AIR	All India Reporter
3.	BJP	Bharatiya Janata Party
4.	CAA	Citizenship Amendment Act
5.	CrPC	Criminal Procedure Code
6.	DSP	Deputy Superintendent of Police
7.	ICCPR	International Covenant on Civil and Political Rights
8.	IPC	Indian Penal Code
9.	LSAA	Legal Services Authority Act
10.	MASUKA	Maanav Suraksha Kanoon
11.	NAACP	National Association for the Advancement of Colored People
12.	NAAL	National Afro-American League
13.	NCAML	National Campaign Against Mob Lynching
14.	NCRB	National Crime Records Bureau
15.	NGO	Non-Governmental Organisation
16.	PIL	Public Interest Litigation
17.	SC	Supreme Court
18.	SCC	Supreme Court Cases
19.	UDHR	Universal Declaration of Human Rights
20.	UOI	Union of India

# CHAPTER 1

## INTRODUCTION

### 1.1 GENERAL

“The rule of law can only be maintained if individuals and institutions recognise, honour, and abide by the laws.” The rule of law serves as the essential structural component of democratic governments in all countries. The Indian Constitution, specifically Article 21, provides protection for the fundamental rights of individuals, including the right to life and personal liberty. The idea that rulers never commit crimes is one that belongs to a bygone era; in today’s world, everyone, even kings and commoners, is held to the same standard by the law. The common law of the country is something that everyone, even members of the government or its officials, is expected to abide by. Article 39, Magna Carta (1215), states “No freemen shall be taken or imprisoned or disseised or exiled or in any way destroyed, nor will we go upon him nor send upon him, except by the lawful judgment of his peers or by the law of the land.”

In the legal matter of ‘National Human Rights Commission V. State of Gujarat and others’<sup>1</sup>, the highest court of the land made the following observation: “The characteristic feature of a democratic society is the presence of communal harmony.” It is a widely held belief that no religion espouses the ideology of hatred. This assertion is often made in the context of interfaith dialogue and is supported by the teachings of various instances where individuals are slain in the guise of religious justification, it can be posited that such occurrences represent a derogatory and stigmatic mark upon the societal framework that is predicated upon the principles of legal governance. The Preamble of the Constitution of India makes reference to the principle of secularism. The assertion that individuals who exhibit extreme religious fervour do not truly align with any particular religious doctrine is a notion that has been posited by many. Such individuals, commonly referred to as religious fanatics, are often likened to terrorists who engage in the senseless slaughter of innocent individuals. The establishment of a crime-free society is a crucial objective that must be pursued with utmost diligence. The achievement of this objective is crucial in order to guarantee that each individual within our country can lead a life of serenity and fully exercise their entitlements. The achievement of effective governance is contingent upon the implementation of an

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<sup>1</sup> (2009) 6 SCC 342

efficient criminal justice administration, which serves as a fundamental pillar of this system. The imperative responsibility of the criminal justice administration is to execute its duty with promptness and efficiency in the punishment of offenders, thereby instilling a sense of trust and fostering a culture of reverence for the legal system. Regrettably, on numerous occasions, law enforcement agencies exhibit reluctance in registering a First Information Report (FIR). The registration of a FIR by the police may result in either a feeble case being constructed or a multitude of inadequacies in the case preparation that render it incapable of withstanding the judicial scrutiny of the court. Consequently, the accused may be exonerated, thereby depriving the victim of justice. The concept of justice, which is often sought by those who have been wronged, remains elusive for many victims. Despite their efforts to seek retribution for the harm inflicted upon them, the maintenance of equilibrium within society is a crucial responsibility of the criminal justice administration, as it serves to prevent criminal activity and ensure that justice is served to those who have been victimised. This task requires a delicate balance between various factors, including the enforcement of laws, the protection of individual rights, and the promotion of social welfare. By attaining this equilibrium, the criminal justice administration can proficiently execute its duty to protect the public and uphold the tenets of justice and equity.

In response to the escalating occurrences of lynching incidents, the esteemed former President, Late Mr. Pranab Mukherjee, expressed his views on July 1, 2017. He emphasised the need for individuals to exercise caution and introspection when confronted with mob frenzy that has reached a level of irrationality and uncontrollability. The former President underscored the importance of proactive vigilance in safeguarding the fundamental principles of our nation. The present discourse concerns the imperative for a nation to take a stand against the escalating phenomenon of mob lynching cases, with a particular emphasis on the necessity to restrain the fervour that drives such acts of violence.<sup>2</sup>

The National Crime Records Bureau (NCRB) has provided data pertaining to the incidence of cases registered under the category of Communal/Religious Rioting for the years 2017, 2018, 2019, 2020, and 2021. The figures indicate that in the year 2017, a total of 723 cases were registered, while in the subsequent year of 2018, the number decreased to 512. The year 2019 saw a further decline in the number of cases, with 438 cases being registered. In contrast, the

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<sup>2</sup> 'President concerned over increased mob lynching' (Nagaland Post, 2 July 2017) <[www.https://nagalandpost.com/index.php/president-concerned-over-increasing-mob-lynching](https://nagalandpost.com/index.php/president-concerned-over-increasing-mob-lynching)> accessed 28 June 2023

year 2020 experienced a notable surge in case numbers, with a total of 857 cases being officially recorded. The year 2021 has 378 cases.<sup>3</sup>

As per the definition provided by the Merriam-Webster Dictionary, the action of “lynching” is characterised by the act of putting an individual to death through means such as hanging, by way of a collective and unregulated mob action, without any legal authorization. In 1969, the esteemed historian Frank Shay posited that the act of lynching, at a certain juncture, had become an integral component of the American cultural fabric, akin to the ubiquitous and quintessential dessert dish of apple pie. Throughout history, a significant number of lynching cases have taken place in public spaces, often in the presence of large crowds who had congregated to witness the event. In the literary realm, Ralph Ellison has expounded upon the concept of a lynching as a ceremonial performance that typically unfolds within a milieu of heightened fervour.<sup>4</sup>

The etymology of the term “lynch” is a subject of contention among scholars and linguists. The origins of the widely cited book *Lynch-Law*, which was published in 1905, were traced by James E. Cutler to the Revolutionary War-era politician Charles Lynch of Virginia. Lynch, who held the esteemed positions of justice of the peace and landowner, is credited with the inception of this phenomenon. In light of the absence of a well-established official court system and the ongoing war, Lynch devised an alternative mechanism of informal citizen juries to adjudicate legal matters. It is imperative to underscore at this juncture that the sanctions meted out by Lynch’s tribunal did not encompass the capital punishment of hanging that is commonly linked with the contemporary interpretation of lynching. It has been observed that the sentence most frequently imposed upon those who have been found guilty of a transgression is the infliction of 39 lashes upon the offender through the use of a whip.<sup>5</sup>

Throughout the course of history, the term “lynch” has undergone a semantic shift, whereby its original meaning of a private punishment for an alleged offence has evolved into a public execution by hanging. This transformation has been gradual and has occurred over a

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<sup>3</sup> ‘No separate data of mob lynching maintained by NCRB, Govt tells RajyaSabha’ *The Statesman* (7 December 2022)

<sup>4</sup>Lakshmi Gandhi, ‘Tracing The Story Of 'Lynch Mob'(Code Switch, 30 September 2013) <<https://www.npr.org/sections/codeswitch/2013/09/30/227792122/tracing-the-story-of-lynch-mob>> accessed 28 June 2023

<sup>5</sup>Lakshmi Gandhi, ‘Tracing The Story Of 'Lynch Mob'(Code Switch, 30 September 2013) <<https://www.npr.org/sections/codeswitch/2013/09/30/227792122/tracing-the-story-of-lynch-mob>> accessed 28 June 2023

significant period of time, as the term has been used in various contexts and has been subject to different interpretations. Nevertheless, the current definition of “lynch” as a form of capital punishment carried out by a mob or a group of people has become firmly established. As the United States underwent westward expansion, scholars Eric Foner and John A. Garrity observe in their work entitled *The Reader’s Companion to American History* that lynching emerged as a frequent phenomenon in response to criminal activity. In the antebellum period, Foner and Garrity have observed that the individuals most frequently subjected to lynching were those who engaged in gambling, horse thievery, and those who opposed the institution of slavery.<sup>6</sup>

In a nation where the Hindu population constitutes a majority, the bovine species is regarded with great reverence and esteem. The act of slaughtering and consuming beef has been known to incite mob violence due to its perceived status as a sinful and criminal act. Thus far, the enforcement of the aforementioned regulation has not been rigorously implemented. The consumption of beef derived from cows has become a popular dietary choice among certain religious and cultural groups, namely Muslims and Dalits, due to its affordability, accessibility, and high protein content. Unlike other animals, the consumption of cow meat does not carry any religious or cultural taboos within these communities. In contemporary times, social media has emerged as a platform that not only facilitates communication and exchange of ideas but also serves as a conduit for the propagation of animosity and aggression, particularly towards the Muslim community in India, as evidenced by the emergence of cow vigilantes. The present discourse concerns the unfortunate incidents of homicide that have occurred in various parts of India in recent times. Specifically, the murder of Junaid Khan in a train while commuting in the Haryana province in June of 2017, the murder of Alimuddin Ansari by the self-proclaimed ‘cow protector’ group known as Go-Rakshak-Dal on a busy road in Jharkhand in July of 2017, and the murder of Pehlu Khan by the same group in a highly populated area of Rajasthan State in May of 2017 are of interest. It is noteworthy that these incidents are not isolated, as there have been numerous similar occurrences in other regions of the country in recent years. The collective individuals comprising a mob are typically a clandestine faction that engages in the administration of justice upon a purported offender through the public dissemination of punishment. In the majority of instances, perpetrators employ multimedia platforms as a means of disseminating

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<sup>6</sup>Ibid.

visual depictions of their nefarious acts. Such depictions may take the form of both still images and moving pictures. It is a widely observed phenomenon that instances of mob violence often involve the consumption or possession of beef, as well as the act of cow slaughter.<sup>7</sup>

The act of lynching has been traditionally characterised as an unlawful and expeditious form of execution carried out by an aggressive and unruly group of individuals. The practise of lynching in the United States represents one of the most abhorrent and egregious episodes in American history, characterised by the systematic terrorization of African American minority groups by their White counterparts. The present discourse concerns itself with the estimations of the number of African American individuals who were subjected to the heinous act of lynching in the United States during the late 19th and 20th centuries. The range of estimations, as per Dray (2002), has been reported to be between 2789 to 3,417. The phenomenon of lynching in the United States has been widely recognised as a defining characteristic of a bygone era, one that was marked by a simpler and less sophisticated culture. However, it is important to note that the act of lynching itself is not bound by any particular time period, but rather is a timeless crime that has persisted throughout history. The act of lynching, akin to other forms of inter-group aggression such as hate crimes, racial cleansing, and genocide, serves as a clear manifestation of the underlying social context in which it takes place. As with many phenomena observed in the real world, lynching is a complex and multifaceted phenomenon that warrants careful analysis and examination. The phenomenon of lynching has been widely analysed and interpreted as a manifestation of the dominant group's inclination to uphold its position of power and privilege within the societal framework.<sup>8</sup>

The occurrences of mob violence that have transpired in recent times serve as a warning to the Government to establish and execute a robust legal framework that safeguards the lives of innocent individuals. The absence of a specific provision in the IPC pertaining to the criminalization of lynching is a notable observation. The Indian Constitution, as a secular, democratic, and socialist entity, is designed to provide justice and protection to all of its citizens. Despite the presence of a diverse range of cultures, languages, faiths, beliefs, and religious foundations, there remains the potential for conflict between these groups. Nonetheless, the Constitution remains steadfast in its commitment to ensuring the well-being

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<sup>7</sup> 'Accused in Junaid Khan's murder case has confessed: Haryana police' *The Times of India* (10 July 2017)

<sup>8</sup> Abrams D, 'Social Self-regulation' (1994) 20 *Personality and Social Psychology Bulletin* 473-483.

of all individuals within its purview. The safeguarding of legal and fundamental rights of individuals is of paramount importance, particularly with respect to the Right to Life and Personal Liberty as enshrined in Article 21, and the Right to Fair Hearing or Trial as provided for in Articles 20 and 21 in both civil and criminal matters. These rights are deemed to be the most significant among all rights, as they are immune to abrogation even in the event of a national emergency, as stipulated in Article 352. The proposition put forth by the user suggests the implementation of a legal doctrine known as strict and absolute liability, which would be accompanied by provisions aimed at addressing incidents of lynching and similar offences. These provisions would be incorporated into the IPC, thereby enabling the appropriate handling of such cases. The expeditious application and implementation of laws pertaining to anti-lynching in India is of paramount significance due to the escalating incidence of mob lynching in diverse manifestations. The provision of Article 21, which guarantees the right to life, as well as the Preamble of the Indian Constitution, both espouse lofty goals that must be taken into consideration when implementing policies that impact the safety, security, and dignity of Indian citizens. These fundamental principles are of utmost importance and must be upheld in all relevant contexts. The efficacy and stringency of a law are paramount in ensuring that no individual or group is granted undue privilege to manipulate or circumvent its provisions. The law must be upheld as an impartial and objective standard, free from the influence of personal biases or subjective interpretations. Any attempt to subvert or undermine the law through extra legal means is antithetical to the principles of justice and equality that underpin a democratic society. Therefore, it is imperative that the law remains steadfast and resolute in its application, without exception or favouritism towards any particular individual or group.<sup>9</sup>

## **1.2 MOB LYNCHING MEANING:**

In 1992, the United States Congress provided a definition for the act of lynching. The provision mentioned above establishes that the act of lynching, characterised by the involvement of a minimum of five individuals acting in concert, lacking legal authority, with the objective of causing harm or killing a person who is under the custody of a peace officer, with the intention or result of denying such individual their rightful legal process or equal protection under the laws, is considered to be illegal.<sup>10</sup>

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<sup>9</sup> Abrams D, Hogg MA, '*Collective Identity: Group-membership and Self-conception*' in Brewer MB, Hewstone M (eds), *Self and Social Identity* (Blackwell 2001) 147.

<sup>10</sup> Dray P, *At The Hands of Persons Unknown: The Lynching of Black America* (Modern Library 2002).



The phenomenon of mob lynching has been defined as a form of violence that is perpetrated by a sizable group of individuals who have targeted a specific victim or group of victims. This type of violence is characterised by its collective nature, as it involves the coordinated actions of multiple individuals who act in concert to carry out the attack. The term “mob lynching” has been used to describe this phenomenon, which has been observed in various contexts and settings around the world.

The perpetration of violence is equivalent to transgressions against the physical form or possessions of individuals, whether they be publicly or privately owned.

The phenomenon of vigilantism is a complex and multifaceted social issue that has been observed in various contexts throughout history. Vigilantism encompasses the behaviour exhibited by individuals or collectives who assume the responsibility of enforcing justice independently, bypassing established legal protocols, and administering retribution to individuals they perceive as having transgressed, without adhering to formal legal procedures. The motivations behind vigilantism are varied and can include a desire for justice, a sense of moral outrage, or a belief that the legal system is ineffective or corrupt. In some cases, vigilantism may be driven by a desire for retribution or revenge, rather than a genuine concern for justice. Regardless of the underlying motivations, vigilantism is widely regarded as a violation of the rule of law and a threat to the stability and legitimacy of the legal system. The mob mentality that often accompanies vigilantism can lead to a breakdown of social order and the perpetuation of violence and injustice.<sup>11</sup>

### **1.3 NATURE OF LYNCHING**

The act of lynching, a form of extrajudicial punishment, has taken on various forms throughout history. These forms have ranged from clandestine hangings and shootings carried out by small groups of individuals, to instances of summary justice being meted out at the end of a manhunt, to grandiose public spectacles that involved the participation of the wider community. The diversity of these forms of lynching underscores the complexity of this phenomenon and the ways in which it has manifested itself in different contexts. Centuries has been a barbaric and inhumane practise that has been used to intimidate and terrorise marginalised communities. The act of lynching involves a group of individuals taking the law into their own hands.

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<sup>11</sup> ‘Mob lynching’ (*Drishtilas*, 23 December 2021) < <https://www.drishtilas.com/daily-updates/daily-news-analysis/mob-lynching-4>> accessed 26 June 2023.

The notoriety of the South was largely due to the heinous acts of torture and mutilation that were frequently perpetrated, culminating in the untimely demise of the victim, often by means of hanging or, more commonly, immolation. The act of lynching, a form of extrajudicial punishment, was a ritualistic practise that involved several key elements. Firstly, there was often a premeditated indication of the impending event. Additionally, the selection of a location that held symbolic significance was of great importance. Finally, a large gathering of individuals, including women and children, would assemble to witness the spectacle.

In the context of historical mob violence, it was a common practise for the perpetrators to extract confessions from their victims. This was often accompanied by a ritualistic performance, wherein the victims were given the opportunity to pray before the final act of the drama. Such acts of violence were often driven by a complex interplay of social, political, and cultural factors, and were deeply ingrained in the collective psyche of the communities in which they occurred. Throughout history, acts of violence and brutality have been perpetrated against individuals who have been deemed as societal outcasts or transgressors. In particular, both hangings and burnings have been utilised as methods of punishment, with mobs often taking it upon themselves to carry out these heinous acts. In addition to the physical act of execution, these mobs have been known to subject their victims to further torment not limited to torture, mutilation, castration. It has been observed that in the context of certain rituals, the individual who has purportedly suffered harm or a person closely related to them is frequently accorded a significant position. One of the most abhorrent aspects of the act of lynching was the practise of collecting mementos in the shape of bodily remains, fragments of bones retrieved from the charred remains, or photographic images. The current state of knowledge regarding the social composition of southern mobs is characterised by a lack of clarity and understanding. The composition of lynch mobs has been a topic of debate among scholars. While some have posited that these groups were predominantly comprised of individuals from the lower echelons of society, a prevailing consensus has emerged that suggests that even community leaders and members of the upper class were complicit in the mob's actions. In fact, it was not uncommon for these individuals to actively participate in the lynching process, or at the very least, to condone the mob's behaviour. The efficacy of law enforcement officials in thwarting the act of lynching was found to be infrequent, even in instances where they made concerted efforts to do so. Furthermore, the identification and

prosecution of individuals involved in mob violence was a rare occurrence. The attribution of lynching to individuals of unknown identity has been a common practise among authorities.

#### **1.4 STATEMENT OF THE PROBLEM**

The tripartite division of governmental power into the legislature, executive, and judiciary is a fundamental feature of modern democratic states. These three organs of the state are recognised as distinct and independent branches, each with its own unique functions and responsibilities. The legislature, executive, and judiciary are essential components of the constitutional framework of a state, and their interplay is critical to the effective functioning of the state. The tripartite division of power within a democratic society is a fundamental principle that has been widely accepted and implemented across various nations. The legislature, as one of the three branches of government, is entrusted with the responsibility of enacting laws that are deemed necessary for the betterment of the country. The executive branch, on the other hand, is charged with the duty of implementing these laws, while the judiciary is responsible for ensuring that justice is served and that the laws are upheld. This separation of powers is essential in ensuring that no single branch of government becomes too powerful, thereby safeguarding the interests of the citizens and promoting a fair and just society. The esteemed Supreme Court has issued a multitude of guidelines and directives to all states with the aim of preventing the occurrence of mob lynching incidents. The current state of legislative action regarding the Anti-Lynching bill is such that only four states have successfully passed it at present.

#### **1.5 RESEARCH OBJECTIVES**

2. To analyse the main causes of mob lynching.
3. To evaluate critically the IPC, CRPC, and other laws relating to mob lynching passed by the various state governments.
4. To draw attention to the ruling made by the Supreme Court in the Tehseen S. Poonawala (2016) case.
5. To offer the tools to prevent such incidents.
6. To identify the flaws in the current legislation.
7. To objectively assess the issue of mob lynching, the legal system in India, and how it compares to other nations in order to stop it.

## **1.6 SCOPE AND LIMITATIONS**

In accordance of the research objectives, the study will discuss concept of mob lynching. The act of identifying a problem confers a sense of empowerment and vitality, as it provides the impetus to confront and resolve the issue at hand. It is worth noting that every problem inherently contains the seeds of its own solution, thereby underscoring the importance of identifying and acknowledging the problem in order to effectively address it. The present research endeavour undertakes a thorough and meticulous analysis of the occurrences of mob lynching in India. The study aims to provide a comprehensive and in-depth understanding of this phenomenon. The focus of this study is to enhance the understanding of the ubiquitous and permissive nature of violence and justice phenomena. Additionally, this research seeks to investigate the strategies that can be employed to regulate or prohibit these phenomena.

The researcher has limited its scope maximum upto the focus area of India by pointing out suggestions in the context of India.

## **1.7 RESEARCH QUESTIONS**

1. Are the existing laws in India covering the cases of mob lynching enough to deal with this issue?
2. How are the laws dealing with mob lynching in India and other countries vary?
3. What are the challenges and issues before the Indian legislature on dealing with this issue?
4. Are communal and religious extremists responsible for mob lynching, or are people's beliefs and feelings ultimately to blame?

## **1.8 RESEARCH METHODOLOGY**

In this research paper, the researcher has adopted the doctrinal method of research in completion of the research paper. This will include collection of primary data from different sources. In primary method, researcher will refer to various books, journals, articles which will be also available in the library of NLUJAA, Assam. It includes the study and analyzes of periodicals, reports, newspaper, bylaws, notification, paper presented in conferences, rules and regulations, administrative orders, recommendation and guidelines of Ministry of Home Affairs and honourable Supreme Court and various landmark judgments. In secondary method, researcher has referred to online legal data base available in the library of NLUJAA, Assam and free internet. Research papers, books, websites, treaties, comments on statutes,

abstracts, bibliographies, dictionaries, encyclopaedias, indexes, thesaurus, and reviews are examples of secondary materials used in this study.

## **1.9 LITERATURE REVIEW**

The primary aim of the Literature Review is to acquire a comprehensive and fundamental understanding comprising of factual information, principles, issues, theories, and obstacles, among others. Upon conducting a thorough examination of the current legislation pertaining to mob violence in India, this research endeavours to broaden the scope of hypothetical and empirical narratives and scholarly investigations on the topic, thereby establishing the fundamental basis upon which this study is founded and elucidating the rationale behind its pursuit. It is imperative to note that the execution of any socio-legal research endeavour necessitates the consultation of literary works, articles, bare acts provisions, and various internet sites for relevant research. The incorporation of a comprehensive literature review in a related study serves a dual purpose of circumventing redundancy and enhancing the lucidity of the underlying concepts, thereby facilitating a more profound comprehension of the research. In recent times, the phenomenon of mob lynching has garnered significant attention and has emerged as a topic of utmost significance to legal scholars, governmental authorities, and legal practitioners.

The extant literature on mob lynching in India is limited to a handful of articles and research papers, with a conspicuous absence of any published books on the subject within the country's borders. The present topic under consideration exhibits a vast expanse for scholarly inquiry, given its salience as a pressing concern that reverberates across society and the globe. The present research endeavour has entailed a comprehensive exploration and analysis of a multitude of scholarly articles and journals. These sources have been meticulously scrutinised and thoughtfully incorporated into the present study. The present discourse endeavours to provide a comprehensive overview of the scholarly literature on the subject matter at hand. In this regard, a selection of articles and research papers that are deemed relevant and germane to the topic are herein enumerated for the reader's perusal:

### **INDIAN CONTEXT**

**In Recent Writ Petition (civil) no.754/2016, Tahseen S. Poonawalla,** The present document pertains to a writ petition that has been filed by a social activist by the name of Tehseen S. Poonawalla. The pronouncement in question was issued by a panel of three esteemed judges, with the honourable Chief Justice Dipak Mishra presiding over the

proceedings alongside Justice DY Chandrachud and Justice AM Khanwilkar. The Apex Court of India, in the year 2018, undertook a comprehensive examination of the issue of lynching. In its analysis, the Court provided recommendations to the state regarding the implementation of effective laws to combat this heinous act. Additionally, the Court urged for the tracking of cases of mob lynching within their respective jurisdictions, with subsequent submission of reports. The highest judicial body of the nation has attributed the increasing occurrences of lynching to the escalating levels of intolerance and polarisation within the country. In light of this, the court has advocated for the implementation of stringent measures to be taken against those responsible for such heinous acts. In accordance with the Supreme Court's pronouncement, hate crimes are deemed to be a manifestation of intolerance, ideological hegemony, and prejudice, and as such, they are not to be condoned. It is imperative that extrajudicial entities and non-state actors do not supplant the law in any way. The aforementioned extrajudicial endeavours, which are purportedly executed in the name of safeguarding the law, must be promptly and decisively curtailed to prevent their proliferation. The Supreme Court of India has issued numerous directives to all states within the country, with the aim of addressing the issue of mob lynching. The Court has also mandated that a report be submitted regarding incidents of such violence.

**“Mob Frenzy and Lynching...#Not in My Name” by NeehsaHalai (2017)**<sup>12</sup>: The present discourse pertains to an examination of the concept of mob lynching, including its meaning and definition. The documentation of instances and illustrations pertaining to the phenomenon of mob lynching in India, as well as the historical antecedents that have contributed to its emergence, has been undertaken. The present study expounds upon the multifarious factors that have contributed to the widespread indignation among the populace, ultimately culminating in the act of homicide. Among these factors are the misapplication of technological advancements and the conspicuous absence of legal recourse. The present discourse pertains to the collection and analysis of data pertaining to instances of mob violence. It is evident that the gravity of this issue necessitates the implementation of robust legislative measures to effectively address this situation.

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<sup>12</sup> Naeesha Halai, 'Mob Frenzy and Lynching...#Not In My Name' (2017) International Journal of Management and Applied Science 3(11) 40

**“Mob lynching: An uprising offence needed to be strenuous under the Indian legal system”, Arnold Sangma (2017)<sup>13</sup>:** The present discourse pertains to the escalating incidence of mob lynching in the Indian context.

As per the assertions made by the scholar, it has been observed that the legal system of India does not possess any specific legislation that pertains to the act of lynching. However, it is imperative to note that this particular crime is regarded as a grave and abhorrent offence, and individuals who are found to be complicit in such actions are subject to punitive measures. The paper posited that the organisation of awareness programmes at all levels is a recommended course of action. These programmes would serve to disseminate knowledge regarding the legal framework, the ramifications of lynching, and the imperative to cease mob lynching within the nation.

**Research Paper by Aman Gupta (2018):** The topic of mob lynching has been addressed by the esteemed author in his scholarly work entitled “Mob Lynching, The Conundrum of Instant Justice”. The erudite individual endeavoured to explicate the underlying reasons for human beings proclivity towards violent behaviour and their tendency to usurp the authority of the legal system. Individuals of this nature do not regard the lawful course of action as a viable option. The proper approach to addressing any criminal act is a topic of great significance and has been the subject of extensive scholarly inquiry. The handling of criminal behaviour is a complex and multifaceted issue that requires a comprehensive understanding of the underlying causes and the various factors that contribute to the commission of such acts. The academic has expounded upon the necessity of enacting legislation such as the Maanav Suraksha Kanoon (MASUKA), which ought to be enforced with the objective of addressing criminal transgressions that require expeditious dispensation of justice and may necessitate the involvement of law enforcement personnel to ensure the proper administration of justice.

**WhatsApp Vigilantes: “An Exploration of Citizen Reception and Circulation of WhatsApp Misinformation Linked to the Mob Violence in India by Shakuntala Banaji and Ram Bhat with Anushi Aggarwal ,Nihal Passanha and Mukti Sadhana Pravin (2018)”<sup>14</sup>:** The present study delved into an examination of the correlation between the

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<sup>13</sup>Arnold Sangma, 'Mob lynching: An uprising offence needed to be strenuous under the Indian legal system' (2017) International Journal of Academic Research and Development 2(4) 30-34 <[www.academicjournal.com](http://www.academicjournal.com)> accessed 25 June 2023

<sup>14</sup> Shakuntala Banaji and Ram Bhat, 'An Exploration of Citizen Reception and Circulation of WhatsApp Misinformation Linked to the Mob Violence in India' [2018] LSE

utilisation of WhatsApp as a medium for disseminating fabricated news and disinformation in the Indian context. Additionally, the study highlighted the escalation in incidents of lynching and the attendant vigilante violence in India, commencing from the year 2015. The scholars in question have directed their attention towards the intricate interplay between a number of critical factors, including but not limited to the dissemination of misinformation, the proliferation of fake news, the utilisation of propaganda, the incitement of mob violence, the socio-political context in which technology is employed, the motivations and experiences of users, the cultivation of media literacy, and the development of policy and regulatory frameworks. The researchers conducted an analysis of the dissemination of misinformation and hate speech via WhatsApp in India. Their findings indicate that certain demographic characteristics of WhatsApp users in India, including gender, urban or rural residence, age, technological proficiency, religious affiliation, and caste status, are associated with a greater likelihood of sharing specific types of misinformation and hate speech. Specifically, male users, those residing in urban or rural areas, individuals in younger or middle age brackets, those possessing technological literacy, those identifying as Hindu, and those belonging to upper or middle castes exhibit a heightened propensity to share such content.

**Research Paper by Ashraya Singh, Mob Lynching in India: Present and Future Prospect (2018):** The present discourse has expounded upon a multitude of legal provisions that are pertinent to the issue of mob lynching. Additionally, it has been highlighted that the enforcement of these laws is not without its challenges. The esteemed Supreme Court has issued a set of guidelines to each state, mandating the appointment of a nodal officer at the district level. The purpose of this appointment is to take appropriate measures to prevent heinous crimes and identify areas where incidents of mob violence have occurred in recent times. Additionally, the states are required to establish a crime/violence victim scheme to provide relief to the victims of such incidents. The present study additionally highlights the legislative measures proposed by Members of Parliament aimed at mitigating the prevalence of such violent acts.

**A Research Paper by Seema Uikey, Nidhi Dubey (2018)<sup>15</sup>:** The user has made a statement regarding the role of messaging platforms such as WhatsApp in the occurrence of mob lynching incidents. It is suggested that these platforms may bear responsibility for such events. The Republic of India is currently experiencing a notable escalation in the

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<sup>15</sup>Seema Uikey, Nidhi Dubey, 'Mob lynching in India: What's app as social media to 'anti' social media, [2018] IJHSSR



phenomenon of mob lynching. The WhatsApp market in India boasts a staggering user base of over 200 million individuals. The user in question has reportedly forwarded a greater number of messages, photos, and videos than any other country on the planet. This observation suggests that the user in question is an active participant in the global digital communication landscape, and may be indicative of broader trends in the use of digital media for interpersonal communication. Further research is necessary to fully understand the implications of this phenomenon. The dissemination of numerous messages was observed to have been executed through the process of forwarding, with a notable occurrence of such messages being forwarded to multiple groups, each of which was observed to have a membership exceeding 100 individuals. The provision of a platform by the service in question has resulted in the dissemination of fabricated information and the propagation of religious animosity. The Indian Ministry of Electronics and Information Technology has issued a call to action to WhatsApp, urging the company to take swift and decisive measures to put an end to the deleterious effects of the current state of affairs. The Ministry has identified a pressing need for WhatsApp to take immediate and effective steps to address the issue at hand. It is imperative that WhatsApp take responsibility for the situation and take proactive measures to mitigate the negative impact of the current state of affairs.

**A Case Study Related to Mob Lynching by Mithilesh Kumar Choubey (2019)<sup>16</sup>:** The present discourse concerns itself with the occurrences that have taken place within the geographical boundaries of the state of Jharkhand. Throughout the year 2018, the state of Jharkhand has been the site of numerous occurrences of mob lynching, wherein a group of individuals collectively engage in acts of violence against a targeted individual or group. The incidents under consideration have been observed to disproportionately affect individuals identifying as Muslim. As a result, political factions in opposition to the ruling party have put forth the claim that these occurrences are being financially supported by Hindu organisations. In the quest to comprehend the underlying reasons for mob violence in Jharkhand, extensive endeavours have been undertaken. These endeavours have sought to establish that the genesis of violence in Jharkhand is not solely attributable to communal animosity, but rather is rooted in profound feelings of insecurity prevalent in rural areas. Furthermore, it has been posited that other factors also contribute to the emergence of such violence. The present discourse endeavours to critique the notion that each instance of mob lynching ought to be construed as a manifestation of animosity directed towards the minority. The present investigation has

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<sup>16</sup>Mithilesh Kumar Choubey, 'Mob Lynching: A case study Jharkhand' [2019] ResearchGate,

revealed that in the year 2018, there existed a tripartite classification of the masses that were implicated in episodes of tumultuous and disorderly conduct in the Indian state of Jharkhand. The phenomenon of mob violence in India has been a topic of much concern and debate in recent years. This form of violence has been observed to manifest in various ways, with cow vigilantism, angry villagers, and anti-mob lynching protestors being among the most prominent examples. The first of these, cow vigilantism, involves individuals taking the law into their own hands in order to protect cows, which are considered sacred in Hinduism. The second, angry villagers, refers to instances where groups of people become enraged and resort to violence in response.

**“Hate Speech & Mob Lynching: A Study of its Relations, Impacts and Regulating laws” by Dr. Radhey Sham Jha, Dr. Vipin Jain, Dr. Chanchal Chawla (Sept. 2019):** The present discourse delves into the notion that linguistic expressions, whether articulated or inscribed, possess a greater potential for harm than physical aggression. In the context of a democratic state, it is not only permissible for individuals to engage in the critique of governmental policies under the guise of the purportedly sacrosanct principles of freedom of speech and expression, but it is also deemed acceptable to proffer personal commentary on specific individuals.

Numerous legal provisions exist to curtail this phenomenon; however, in actuality, their implementation is negligible. The contemporary era is grappling with the pressing concern of hate speech, which has been identified as a highly perilous phenomenon due to its association with the heinous act of mob lynching, resulting in the tragic loss of numerous lives. The present study endeavours to investigate the intricate relationship between Hate Speech and Mob Lynching. Scholars have made concerted efforts to examine this phenomenon and have put forth recommendations to mitigate its deleterious effects.

**“Indian States Can Stop Rampaging Lynch Mobs” by Chakshu Roy (Sep, 2019)<sup>17</sup>:** The present discourse pertains to the matter of devising effective measures for the prevention of mob lynching incidents across various states of our nation. The apex court, in its wisdom, has issued a series of guidelines aimed at preventing the heinous act of lynching. These guidelines, which have been carefully crafted and thoughtfully implemented, are designed to address the root causes of this disturbing phenomenon and to promote a culture of respect,

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<sup>17</sup>Chakshu Roy, ‘Indian States Can Stop Rampaging Lynch Mobs’ (2019) PRS <<https://prsindia.org/articles-by-prs-team/how-indian-states-can-stop-rampaging-lynch-mobs-350>> accessed 24 June 2023.

tolerance, and understanding among all members of society To date, it has been reported that three states have enacted legislative measures in support of the guidelines promulgated by the Supreme Court. The state of Manipur was the pioneer in implementing the aforementioned action, followed subsequently by the states of Rajasthan and West Bengal. As posited by the researcher, it is imperative to acknowledge that laws alone may not always suffice as a panacea to a given problem. Rather, it is crucial to consider the possibility of complementing or supplementing legal measures with other strategies. This approach may prove to be more effective in addressing complex issues that require a multifaceted approach. The topic at hand pertains to the responsibility of state legislatures in addressing the issue of punishment for criminal behaviour. While some may argue that the sole responsibility of state legislatures is to pass laws that provide strict punishment for criminal activity, it is important to consider the broader scope of their role in this matter. Rather than limiting their involvement to the mere enactment of punitive measures, state legislatures should take a more comprehensive approach to addressing this issue. This involves on-going engagement with the issue of criminal behaviour and its underlying causes, as well as the development and implementation of strategies that aim to prevent such behaviour from occurring in the first place. By taking a more proactive and holistic approach to this issue, state legislatures can play a vital role in promoting public safety and reducing crime rates in their respective jurisdictions.

## **FOREIGN CONTEXT**

**“The NAACP Crusade against Lynching, 1909-1950”, written by William K. Mills (1982)<sup>18</sup>:** The present discourse endeavours to expound upon the arduous efforts undertaken by the National Association for the Advancement of Coloured People (NAACP) in their quest to combat the heinous practise of mob lynching. The NAACP, a prominent civil rights organisation in the United States, has been at the forefront of the fight against racial discrimination and violence since its inception in 1909. In the present discourse, the author expounds upon the subject of violent actions and frustration that were observed during a national-level campaign aimed at combating the heinous act of lynching. The discourse also entailed an examination of the extent to which this affiliation facilitated advancements and instigated modifications in the realm of civil liberties.

**“Lynching, Federalism and the Intersection of Race and Gender in the Progressive Era Barbara” Holden-Smith (1995):** The present discourse concerns the tragic event of a

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<sup>18</sup> William K. Mills, ‘The NAACP Crusade against Lynching’ 7 NBLJ 3

lynching that occurred during the Progressive Era in American history. Specifically, the incident involved the killing of Luther and his wife, which was carried out by a mob of over a thousand individuals. The details of this heinous act will be examined in the following analysis.

During that particular era, instances of lynching, wherein individuals of African American descent were subjected to acts of violence and brutality at the hands of those of Caucasian descent, were seldom subjected to thorough investigation or prosecution, and were almost never met with appropriate punishment. The present discourse centres on the legislative failure to pass the anti-lynching bill during the Progressive Era. The author posits that the enforcement of laws prohibiting lynching was not carried out due to the perception that such an action was beyond the purview of Congress' jurisdiction. This paper delves into the multifaceted nature of suffering experienced by individuals of both black and white races across diverse regions of the state. It also explores the underlying causes of the rampant killings that have plagued these communities.

**“Judge Lynch Denied: Combating Mob Violence in the America south,1877-1950” by E. M. Back (2015)<sup>19</sup>:** The present discourse concerns the emergence of the coarse manifestation of mob violence in the southern region of the United States, which is believed to have transpired within the temporal confines of 1877 and 1950. During the aforementioned period, a staggering 31,000 instances of mob lynching were reported, resulting in the untimely demise of over 3800 individuals hailing from the southern regions. The observation made by scholars and activists was that despite the presence of lynchers in the southern region, their efforts to administer their brand of justice were largely unsuccessful. The researcher has also made mention of the fact that during the early 20th century, several organisations such as the National Association for the Advancement of Coloured People, the Commission on Interracial Cooperation, the Tuskegee Institution, and the Association of Southern Women for the Prevention of Mob Lynching maintained archives of newspaper clippings pertaining to instances of mob violence. However, it is important to note that the primary objective of these organisations was to document such occurrences, rather than to take any concrete action to prevent or address them. The subject of the authors research pertains to the act of lynching, a heinous and barbaric practise that has plagued American society for centuries. The authors

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<sup>19</sup>19 E. M. Beck, "Judge Lynch Denied: Combating Mob Violence in the American South, 1877–1950" (2015) 21 Southern Cultures 27.

efforts were primarily directed towards advocating for the implementation of a proposed federal anti-lynching legislation, which would serve as a means of mitigating the occurrence of such atrocities.

**In the internet article by Susan Glenn (2015), “We charge genocide, The 1951 Black Lives Matter Campaign”:** The present study examines a series of events that occurred between 1945 and 1951, which resulted in the unfortunate loss of human life. Specifically, the study focuses on the documentation of approximately 152 killings that took place during this period. The aforementioned incidents are a direct result of the actions taken by law enforcement officials and the act of vigilante justice perpetrated by a group of individuals against women and children of African descent. The purported assertion has been made that the United Nations, an international organisation established to promote peace and cooperation among nations, has enacted a legal statute prohibiting the heinous crime of genocide. However, it has been alleged that the United States, a prominent member of the United Nations, has failed to execute this law, thereby violating its obligations as a signatory to the aforementioned statute. Consequently, it has been suggested that legal measures ought to be taken against the United States in order to rectify this purported transgression.

## **1.10 RESEARCH DESIGN**

### **Chapter 1: Introduction**

This chapter provides an introduction to mob lynching by explaining its meaning and many definitions. Included are a literature analysis and information on the nature of lynching. The issue statement, study’s purpose and goals, and research methods are all explained in this chapter as well.

### **Chapter 2: Current Indian laws concerning mob lynching cases**

The legislative body of our nation has promulgated a plethora of legal statutes. The issue of mob lynching has become a grave concern in contemporary times, and has prompted the implementation of various legal frameworks to address this matter. These frameworks include the IPC, the CrPC, the Indian Evidence Act, the Human Rights Act, Constitutional Law, and numerous bills that have been enacted by state governments. The present chapter comprehensively outlines the legal framework that exists within our nation, as well as the various bills that have been enacted by the state government in order to effectively mitigate the occurrence of violent events.

### **Chapter 3: Indian legislature's challenges and issues**

The legislature serves as a key governmental body responsible for creating laws. This chapter encompasses the identification of gaps in current legislation and the rationale behind the need for separate laws to address incidents of violence. Additionally, it addresses various challenges and issues faced by the legislature beyond the realm of legislation.

### **Chapter 4: Mob lynching and its judicial approach**

The primary function of the judiciary is to ensure the implementation of the law. The esteemed Supreme Court of India has promulgated a set of guidelines pertaining to the issue of mob lynching, which have been disseminated to all state governments. This chapter shall explicate the measures recommended by the Court to address this pressing problem.

### **Chapter 5: Conclusion and Suggestion**

This chapter provides the conclusion and suggestion of the study. This chapter carries the researcher own interpretation in regards to mob lynching in India. It more or less reflects the answers of the research questions. It is the concluding part of the researcher's research work.

## **CHAPTER 2**

### **CURRENT INDIAN LAWS CONCERNING MOB LYNCHING CASES**

#### **2.1 CONSTITUTIONAL LAW**

The Indian Constitution is widely considered to be the preeminent legal document in India, serving as both the Grundnorm and the authoritative source of all local laws within the country's territorial boundaries. As the supreme law of the land, it holds a position of unparalleled significance in the Indian legal system. The fundamental principles of a democratic society entail the provision of a set of indispensable liberties and entitlements to its populace, coupled with the availability of legal remedies in the event of any infringement of these rights. The Indian Constitution, a document of paramount importance, safeguards the fundamental rights of its citizens by endowing them with the prerogative to approach the highest judicial authority of the land, the Supreme Court, as per the provisions enshrined in Article 32. Additionally, the Constitution also empowers the citizens to seek redressal from numerous High Courts across the country, as stipulated under Article 226, in the event of any infringement of their fundamental rights.

##### **2.1.1 ARTICLE 14 – EQUALITY BEFORE LAW**

The fundamental right to equal protection under the law and before the law is enshrined in Article 14 of the Constitution. The fourteenth article of the constitution pertains to the fundamental right of equality. This provision ensures that all individuals are treated equally under the law, without any discrimination based on their race, religion, caste, gender, or any other such factor. The aforementioned statement posits that the State shall not withhold from any individual situated within its territorial jurisdiction the fundamental right to equality before the law or equitable protection of the laws. The present discourse, as per the article in question, posits that the legal system operates on the fundamental premise of impartiality, wherein all individuals, irrespective of their social standing or professional designation, are accorded equal treatment under the law. This principle of equitability is upheld from the highest echelons of political power, such as the prime minister, to the lowest rungs of law enforcement, including the police personnel. The principle of treating individuals equally in identical situations is a fundamental tenet of justice and fairness. This concept, commonly referred to as the principle of equality, posits that all individuals should be treated with the

same level of respect and consideration, regardless of their personal characteristics or circumstances. The present article posits that the provision of equal protection to both the victims of mob violence and the offenders is a fundamental tenet of the law. It is the contention of this paper that the law provides all individuals with equitable opportunities, free from any form of prejudice or partiality.<sup>20</sup>

### **2.1.2 ARTICLE 19 – RIGHT TO FREEDOM**

The fundamental law of the land, namely the Constitution, has enshrined the right to free speech and expression for all individuals under Article 19 (1) (a). However, it is pertinent to note that this right is not absolute and is subject to certain limitations as prescribed in clause (2) of the aforementioned article. Individuals who express dissent towards acts of violence or instances of injustice are entitled to exercise their freedom of expression. The constitutional provision of Article 19 (1) (b) guarantees the fundamental right of individuals to assemble in a peaceful manner and without the use of arms. The aforementioned statement posits that the denizens of India have been bestowed with the liberty to congregate and orchestrate a communal assembly or even processions of their own accord. In the context of criminal activity perpetrated against a particular demographic within society, the utilisation of such incidents as a means of leveraging governmental action is a common practise. However, it is important to note that such a strategy is not without its constraints. The concept of limitations is a fundamental principle in the legal system, which is universally recognised and respected. It is a well-established notion that no individual or entity is permitted to exceed the prescribed limitations, as doing so would be a violation of the law. Furthermore, it is imperative to note that the abuse of limitations is strictly prohibited and carries severe legal consequences. The fundamental right enshrined in Article 19 (1) (g) of the Constitution of India guarantees the freedom to engage in any trade, commerce, business, or activity of one's choosing, subject to the condition that the state does not impose any unjustified restrictions. This constitutional provision is a cornerstone of economic liberty and individual autonomy, and has been interpreted by the judiciary as a vital safeguard against arbitrary state action that may impede the exercise of this right. The scope and ambit of this right have been the subject of extensive legal discourse and analysis, and its implications for economic development and social welfare have been widely debated. Nonetheless, it remains a crucial aspect of the constitutional framework that underpins the democratic and pluralistic ethos of the Indian polity. Notwithstanding, it is imperative to note that engaging in commercial activities that

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<sup>20</sup> Dr. Rao Surya Rega, Lectures on Constitutional Law, 1st edn (Hyderabad, 2002) 38.



are in contravention of the regulations set forth by the Central or State Governments is not permissible. A case in point is the curtailment of beef trade by several State Governments due to the revered status of cows in India, their significance to the Hindu populace, and the fact that they have been a primary catalyst for instances of mob lynching. Consequently, it is imperative to note that any person who partakes in such restricted commercial activities is susceptible to facing lawful repercussions.

### **2.1.3 ARTICLE 21 – RIGHT TO LIFE**

The Indian Constitution, a foundational legal document, enshrines a fundamental right to life and individual liberty in Article 21. This constitutional provision serves as a cornerstone of the Indian legal system, ensuring that every individual is entitled to a life of dignity and autonomy. The guarantee of these rights is a vital aspect of the Indian Constitution's commitment to protecting the fundamental values of justice, equality, and liberty. The concept in question serves as the bedrock upon which fundamental rights are constructed. The aforementioned statement posits that no individual shall be stripped of their right to life and personal freedom unless it is done in accordance with the legal process. The fundamental right to life and personal liberty, as enshrined in Article 21 of the Constitution, encompasses a range of entitlements. These entitlements are integral to the preservation of human dignity and the promotion of individual autonomy. The right to life and personal liberty, as protected by Article 21, includes, but is not limited to, the following:

1. Right to Privacy
2. Right to Livelihood
3. Right to Dignity
4. Right to get clean water and pollution free air
5. Right to Education, etc

### **2.1.4 ARTICLE 25 – RIGHT TO PROFESS, FAITH AND BELIEF**

The Preamble of the Indian Constitution unequivocally declares India as a secular state, thereby ensuring that its inhabitants are bestowed with the fundamental right to exercise their religious beliefs without any hindrance or coercion. This constitutional provision is a testament to India's commitment to safeguarding the religious freedom of its citizens, thereby fostering a pluralistic and inclusive society. The Indian Constitution, a seminal document that

serves as the supreme law of the land, contains a provision in Part III that safeguards the fundamental right of individuals to practise their chosen religion without fear of persecution or discrimination. This constitutional guarantee, enshrined in Article 25-28, is a cornerstone of India's commitment to upholding the principles of secularism and pluralism, and is reflective of the country's rich cultural and religious diversity. As such, Article 25 of the Universal Declaration of Human Rights stipulates that individuals possess the liberty to profess, embrace, and practise any religion of their choosing, or to abstain from religious adherence altogether. This fundamental right to religious freedom is a cornerstone of human rights, and it is incumbent upon states to ensure that this right is protected and upheld for all individuals within their jurisdiction. The aforementioned statement serves as a testament to the fact that irrespective of an individual's affiliation with the dominant or subordinate group within a given polity, the legal framework ensures that every citizen is entitled to exercise their autonomy in the pursuit of their personal objectives. The fundamental right to freely practise one's religion or customs is a universally recognised entitlement. However, in certain regions of the country, this entitlement appears to be undermined by a series of incidents that are either directly or indirectly linked to religious beliefs. In such cases, the majority often dominates the minority, leading to violent outcomes. Throughout the course of history, there have been a multitude of documented cases of communal violence, which have targeted various marginalised groups such as Kashmiri Pandits, Dalits, Muslims, Sikhs, and other minority communities.

## **2.2 MOB VIOLENCE LAWS IN THE INDIAN PENAL CODE,1860**

In the context of India, it is customary for incidents of lynching to be documented and reported in accordance with the legal provisions outlined in Section 302 of the IPC, which pertains to the crime of murder, and Section 307, which pertains to the crime of attempted murder. Sections 323, 324, 325, and 335 of the legal code are of paramount importance in the realm of criminal law, as they pertain to the punishment for causing harm, grievous harm, and grievous hurt, respectively. These provisions are designed to ensure that individuals who engage in such conduct are held accountable for their actions and that justice is served. It is therefore imperative that these provisions be carefully scrutinised and applied in a judicious manner to promote the overarching goals of the legal system. The IPC, a comprehensive legal document that outlines the criminal laws of India, contains several sections that pertain to the offence of rioting. Section 147 of the IPC prescribes punishment for the act of rioting, while Section 148 provides for the same offence when committed while armed with a deadly

weapon. Furthermore, it is worth noting that Section 149 of the IPC delineates the responsibility of each participant in an illicit gathering for any offence committed in the pursuit of a shared objective. Finally, Section 34 of the IPC addresses the culpability of individuals who act in concert to further a common intention. These sections, taken together, provide a framework for the prosecution of individuals who engage in riotous behaviour in India.

There are provisions in the IPC, for example, unlawful assembly<sup>21</sup>, common intention<sup>22</sup>, rioting<sup>23</sup>, culpable homicide<sup>24</sup>, murder<sup>25</sup>, hurt<sup>26</sup>, and grievous hurt<sup>27</sup>.

Section 302 of the IPC defines homicide punishment. It expresses that “anyone who commits murder will be punished with capital punishment or detention for life, as well as fined.”<sup>28</sup>

Section 304 of the IPC defines culpable homicide that does not amount to murder. “Whoever submits to blame murder, not amounting to murder, shall be punished with life imprisonment or imprisonment for any time up to 10 years, as well as a fine.”<sup>29</sup>

“Section 307 of the IPC defines Attempt to Murder as whoever does any demonstration with such expectation or information, and under such conditions, that if he by that demonstration caused passing, he would be blameworthy of homicide, will be rebuffed with the detention of either portrayal for a term which may reach out to ten years, and will likewise be at risk to fine and whenever harm is caused to any individual by such act, The perpetrator will face either permanent incarceration or the previously mentioned discipline. When any individual guilty under this section is sentenced to life in prison, he may be rejected with death anytime harm is inflicted.”<sup>30</sup>

“Section 323 of the IPC provides for Punishment for Wilfully Causing Hurt, as whosoever wilfully causes hurt will be rebuffed with either portrayal for a term of up to one year, or with a fine of up to one thousand rupees, or with both.”<sup>31</sup>

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<sup>21</sup> Section-141, the Indian Penal Code, 1860

<sup>22</sup> Section-34, the Indian Penal Code, 1860

<sup>23</sup> Section-146, the Indian Penal Code, 1860

<sup>24</sup> Section-299, the Indian Penal Code, 1860

<sup>25</sup> Section-300, the Indian Penal Code, 1860

<sup>26</sup> Section-319, the Indian Penal Code, 1860

<sup>27</sup> Section-320, the Indian Penal Code, 1860

<sup>28</sup> Section 302, the Indian Penal Code, 1860

<sup>29</sup> Section 304, the Indian Penal Code, 1860

<sup>30</sup> Section 307, the Indian Penal Code, 1860

<sup>31</sup> Section 323, the Indian Penal Code, 1860

“Section 325 of the IPC provides for punishment for causing grievous harm on purpose.” Except in the case specified in Section 335, anybody who wilfully causes offensive harm will be punished by imprisonment in either portrayal for a time of up to seven years, as well as a fine.”<sup>32</sup>

“IPC Section 34: - This section characterises regular goals. When a criminal demonstration is accomplished by a few persons in support of the common expectation of all, every one of those people is subject to that demonstration as if it were done by just him.”<sup>33</sup>

“Section 141 of the IPC: - This section governs unlawful gathering.” An “unlawful gathering” is defined as a gathering of at least five persons. If a gathering causes injury to anyone, all of them will be held accountable as a result of the unlawful assembly and will face appropriate punishment.”<sup>34</sup>

“Section 149 of the IPC states that any individual from an unauthorised group is guilty of the offence charged in the arraignment of the basic item.” In the event that an offence is committed by an individual participating in an unlawful assembly, with the intent being consistent with the primary purpose of said assembly, or if the members of said assembly were aware that the offence would be committed in furtherance of that objective, then each individual who is a member of the same assembly at the time of the offense’s commission shall be held liable for said offence. This portion will be used if there is a common aim of a horde, such as a throng with the usual goal of rebuffing the bovine merchants.”<sup>35</sup>

“Sections 147 and 148 of the IPC characterise revolting and discipline in this segment.” Individuals found responsible for engaging in acts of rebellion, possessing primitive weaponry or any object that can be utilised as a weapon for the purpose of committing an unlawful act, are susceptible to perpetrating a criminal offence. As a consequence, they shall be subjected to punitive measures, which may include imprisonment for a duration of up to three years, imposition of a monetary penalty, or a combination of both.<sup>36</sup> Criminal conspiracy is defined in Section 120-B of the IPC. If a group of people conspires to commit an offence punishable by death or confinement, they shall be subject to this section.”<sup>37</sup>

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<sup>32</sup> Section 325, Indian Penal Code 1860

<sup>33</sup> Section 34, Indian Penal Code 1860

<sup>34</sup> Section 141, Indian Penal Code 1860

<sup>35</sup> Section 149, Indian Penal Code 1860

<sup>36</sup> Section 147, 148, Indian Penal Code 1860

<sup>37</sup> Section 120B, Indian Penal Code 1860

Elements of Section 141:

1. There must be at least five individuals present.
2. The usual purpose of such a gathering should be illegal.
3. The object must be one of the five items listed in area 141.
4. The objects of the unlawful gathering are:
  - a. To employ and display criminal force against a union, a state government, or a community worker;
  - b. To resist the enforcement of any legislation or legal procedure;
  - c. To perpetrate vandalism, illegal trespass, or other crime;
  - d. By using illegal authority or exhibiting criminal power to any individual in order to seize any individual or property or deny delight in any individual's decision to progress or the utilisation of water or other such right, and so on;
  - e. By using or exhibiting criminal authority to persuade anybody to participate in an illegal demonstration.
5. A gathering that was not illegal at the time it was formed but may become so after a period.

To commit an offense, when a gathering of minimum five individuals shares a common objective of organizing a demonstration that is forbidden by law or constitutes a criminal act under the IPC or other specific laws at the national or local level, such a assembly would be deemed unlawful.

### **2.2.1 UNLAWFUL ASSEMBLY DISCIPLINE**

- i. Anyone who participates in an illegal gathering is subject to a half-year jail sentence, a fine, or both under Section 143 of the I.P.C.<sup>38</sup>
- ii. As per Section 144 of the IPC, individuals who join an unlawful assembly while carrying a dangerous weapon capable of causing harm may be subjected to a substantial period of imprisonment, a monetary penalty, or both.<sup>39</sup>
- iii. As per the provisions of Section 145 of the IPC, individuals who choose to participate or remain in an unlawful assembly despite being explicitly instructed

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<sup>38</sup> Section 143, Indian Penal Code 1860

<sup>39</sup> Section 144, Indian Penal Code 1860

to disperse will be liable to endure a substantial period of imprisonment, pay a substantial monetary penalty, or both.<sup>40</sup>

## **2.3 UNDER THE CRIMINAL PROCEDURE CODE, 1973**

The CrPC, 1973, Section 223(a), states that it is possible to charge two or more accused jointly in prosecution for the same offence committed by them under the provision, but nothing is mentioned about the justice delivery system.<sup>41</sup>

### **2.3.1 SECTION 144 OF CRIMINAL PROCEDURE CODE, 1973**

This provision empowers a District Magistrate, a Sub-divisional Magistrate, or another Executive Magistrate specifically appointed by the state government for this purpose to devise strategies for situations in which he has adequate grounds to act and when prompt counteraction or remedy is required in the face of a serious threat. The goal of area 144 is to send out a rapid request ahead of time to neutralise any impending risk or to quickly provide a treatment if a crisis occurs.

The protection of harmony and serenity in the public eye is the primary reason for the state government; consequently, the administration frequently engages official judges under 144 to make a prompt move in the event of crisis and to give a quick cure in the following three circumstances In accordance with the provisions of Subsection 1 of Section 144 of CrPC, a notice has been issued to prevent the occurrence of a certain situation or event such as:

1. Causing disruption, inconvenience, or harm to an individual who is lawfully carrying out their duties.
2. A threat to one's well-being, physical condition, or personal security
3. An incident of public disorder, such as a commotion or a fight.<sup>42</sup>

The case of *Dr. Anindya Gopal Mitra v. State*<sup>43</sup> clarified that the power of the magistrate under Section 144 is confined to temporarily restraining the exercise of a right in specific situations rather than completely prohibiting it. In this particular instance, the police commissioner denied permission to a political party (BJP) to hold public meetings, invoking Section 144 of the Code of Criminal Procedure. However, the esteemed Calcutta High Court

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<sup>40</sup> Section 145, Indian Penal Code 1860

<sup>41</sup> Section 223(a) Code of Criminal Procedure

<sup>42</sup> Kanishk Khullar, 'All you need to know about unlawful assembly or Section 144' (*iPleaders*, 1 August 2018) <<https://blog.ipleaders.in/ipc-144>> accessed 28 June 2023.

<sup>43</sup> 1993 CriLJ 2096

invalidated the decision of the police commissioner and emphasized that while meetings could not be entirely banned, certain necessary restrictions and precautionary measures could be imposed.’

According to Section 144 of the CrPC, provision 4, “No organisation under this segment will remain in power for more than two months from the date of issuance, given the state government’s assessment that it is important to do in the event of a crisis to anticipate risk to human life. To ensure public safety or security, or to quell an uprising, the state administration may request that the duration of pertinence of the section 144 be extended by no more than a half year.”

As this section grants the magistrate complete power to undertake specific actions in order to address an imminent threat, it is crucial for the magistrate to carefully assess the situation to ascertain if an order under this section is necessary. Otherwise, matters concerning the dispersal of an unlawful assembly causing public disturbance can be addressed under Section 133 of the CrPC.<sup>44</sup>

### **2.3.2 DISPEL OF UNLAWFUL ASSEMBLIES**

The dispersal of such a gathering is regulated by Sections 129, 130, 131, and 132 of CrPC, 1973.

1. Through Command (Section 129(1): An Executive Magistrate, Officer in Charge of a Police Headquarters, or any officer below the rank of Sub-Inspector, in the absence of higher authority, has the authority to issue an order for the dispersal of an unlawful assembly or any gathering of at least five individuals that is likely to disrupt public peace. It becomes the immediate responsibility of the members of such a gathering to disperse accordingly. Section 129(1), in other words, authorises any Executive Magistrate or Police Officer in charge of a Police Station who is not a Sub-Inspector of Police to order any illegal gathering damaging the open peace to be dispersed.
2. Use of Civil Force (Section 129(2): If, after being so informed, any such gathering does not scatter, the Executive Magistrate or Police Officer may resort to using common power to scatter such gathering, and may enlist the assistance of a male individual to seize or tie such people forming a part of the gathering. In *Nagraj v State*

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<sup>44</sup> Kanishk Khullar, ‘All you need to know about unlawful assembly or Section 144’ (*iPleaders*, 1 August 2018) < <https://blog.ipleaders.in/ipc-144> > accessed 28 June 2023.

of Mysore<sup>45</sup>, a Sub-Inspector of Police in Mysore State was accused of brutally beating a person X and firing at two individuals when Y asked him to excuse X while forcibly carrying him away. The appellant, the sub-inspector, alleged that twenty or thirty individuals assaulted him and a policeman as they were transporting X to the Police Station after detaining him. Ignoring his caution to avoid violence, the throng requested him to wait for Y, which he rejected.

3. Use of Armed Forces (Section 130): If the Unlawful Assembly cannot be considerably dispersed using common authority, the Executive Magistrate in command of the most important post at the moment may order the military to disperse it. To scatter such a gathering by employing military-provided authority, the military must use as little force as possible to do as little harm to persons or property as feasible, and no Executive Magistrate can be consulted.

In the case of *Re-Ramlila Maidan Incident v Home Secretary And Ors*,<sup>46</sup> members of the Rapid Action Force and the Central Reserve Police Force were summoned to disperse the demonstrators assembled at Ramlila Maidan.

4. Power of Armed Force Officers to utilize Force (Section 131): The law also involves the Gazetted Military Officer; if open security is jeopardised, Section 132 of the law provides individuals with insurance against arraignment for any manifestation suggesting to be done under Sections 129 to 131 except with the prior agreement of the Government. In *Nagraj vs. State of Mysore*<sup>47</sup>, the appellant, a sub-inspector accused of using unlawful force against an assembly, contended that the assembly was illegal and that he would be protected by Section 130 of the Code of Criminal Procedure. The Sessions Court raised a concern about the invalidity of the commitment, arguing that a Magistrate could not have initiated proceedings for these offenses without prior authorization from the State Government. This assertion was based on the provisions outlined in Sections 132 and 197 of CrPC.

## **2.4 MASUKA: MAANAV SURAKSHA KANOON**

A civil society led by attorneys and activists like as Sanjay Hegde, Prakash Ambedkar, Tehseen Poonawalla, and Shehla Rashid created the Manav Suraksha Kanoon

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<sup>45</sup>1964 AIR 269.

<sup>46</sup>SCC1, 2012CriLJ3516.

<sup>47</sup>1964 AIR 269.



(MASUKA) draught law.<sup>48</sup> The activist has suggested a legislation against mob lynching in this draught, which will include the terms ‘mob’ and ‘lynching’. It includes suggestions for making mob lynching a non-bailable offence, and the punishment for those guilty would be life in prison, a time of judicial investigation, and reparation to the victim’s family. Manav Suraksha Kanon (MASUKA) is an anti-mob lynching law suggested by the National Campaign Against Mob Lynching (NCAML).<sup>49</sup>

#### **2.4.1 BENEFITS OF MASUKA:**

- Concerns police negligence and collusion.
- Special courts for harsh punishment, prompt relief, and the administration of justice.
- Victims Families Rehabilitation
- Compensation for victims families.
- Witness Protection.

## **2.5 INDIA’S STATE GOVERNMENTS ACTIONS**

### **2.5.1 THE MANIPUR PROTECTION FROM MOB VIOLENCE ORDINANCE, 2018**

States have a hesitation in forming a special law and seeking Central Government implementation of the same, but at the central level, it is not as easy work that can be done easily, which is why some states have made some special laws or passed Ordinances through Governors to deal with riots and other forms of mob violence. Article 213 of the Indian Constitution grants the Governor of a State the authority to issue an Ordinance whenever it is necessary. Ordinances have the same force, authority, and scope as state legislation. In 2018, the Governor of Manipur State exercised the same authority and issued an Ordinance to safeguard people and make lynching a separate and punishable violation.

The purpose of the Ordinance is to make mob lynching a separate crime and to provide sufficient punishment for violence, so that specific law in this regard would in still dread in

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<sup>48</sup>Mausami Singh , Civil society moots law to stop mob lynching: MASUKA, INDTOD, (Oct. 2020, 24, 04:15 PM), <https://www.indiatoday.in/india/delhi/story/national-campaign-against-mob-lynching-masuka-manav-suraksha-kanoon1023046-2017-07-07>.

<sup>49</sup>Saurabh Kumar, ‘Draft law of ‘Manav Suraksha Kanon’ (MASUKA)- National Campaign Against Mob Lynching’ (*iPleaders*, 30 June 2018) < <https://blog.ipleaders.in/draft-law-manav-suraksha-kanoon-masuka-national-campaign-mob-lynching> > accessed 28 June 2023

those who engage in such acts, as well as to provide relief and rehabilitation to victims and family members of mob violence or similar matters incidental or connected thereto.

The Ordinance has several definitions and clauses dealing with mob violence; it defines 'hostile environment' as a coercive environment formed against the victim, and 'household' as family members who are related by blood, marriage, or adoption. A lynching mob is defined as a gathering of two or more persons. 'Lynching' refers to any act of violence or aiding and abetting such an act; 'offensive material' refers to any material that can be fairly regarded as having been designed to urge a crowd to lynch someone because of their religion, caste, race, language, or birthplace, etc. 'Victim' refers to someone who has been harmed physically, mentally, psychologically, or financially.

The Bill is comprised of nine chapters, with the second chapter outlining the "responsibilities of a nodal officer and police officers." In order to address incidents of mob violence, it is mandated that the State Government appoint a Nodal Officer in each district. This individual must hold a senior position, no lower than the rank of superintendent of police. Additionally, the State Government is required to appoint a Deputy Superintendent of Police to provide assistance to the Nodal Officer. Together, they will establish a specialised task force with the objective of preventing instances of mob violence. The Nodal Officer is required to convene regular meetings on a monthly basis. Each police officer bears the responsibility of upholding law and order within their jurisdiction, while also taking necessary measures to mitigate the occurrence of mob violence.

"The prevention of acts leading to lynching or mob violence," is provided under Chapter III. Every police officer must take all reasonable steps to prevent mob violence in his jurisdiction; he must make all reasonable attempts to identify violent criminals, collect information on the likelihood of a lynching, and take all necessary steps to prevent it, including filing a First Information Report (FIR) which comes under Section 153-A of the IPC or such other likewise applicable law, and he may also use his authority and powers as such granted under Section 129 of the CrPC.

"Offences and punishment for the offence of mob lynching," is provided under Chapter IV of the Ordinance. It states that if a person is injured or suffers harm as a result of the actions of a crowd, the perpetrator will face up to seven years in prison and a fine of up to three lakh rupees. If the victim suffers grievous harm, the offender shall be punished with ten years imprisonment and a fine of up to three lakh rupees; if the victim of mob violence dies, the

offender or offenders, as the case may be, shall be punished with rigorous imprisonment for life and a fine of up to five lakh rupees. It also allows for five years in jail and a fine for conspirators and anybody who threatens a witness.

“Some other offences and punishments related to mob violence such as one year to three years imprisonment and fine up to rupees fifty thousand for dissemination by any method or for causing damage to any property movable or immovable; the State Government has the power to impose a collective fine for such offences on such households who are liable collectively to pay the same,” according to Chapter V. This Chapter also allows for a period of up to two years in prison or a fine of up to fifty thousand rupees, or both, for providing false information or failing to submit information when needed. The major and crucial element that separates it from regular laws is its provision that mandates imprisonment for up to three years and a fine of up to Rs. 50,000 for dereliction of duty by police officials.

Chapter VI deals with “investigation, prosecution, and trial,” allowing the provisions of the CrPC to be used wherever they are needed. It also states that the offences stated in this Ordinance are cognizable, non-bailable, and non-compoundable. The violations must be investigated by senior police officers with a level no lower than Sub-Inspector, and all cases must be tried before the designated judges chosen by the State Government under this Ordinance. This Chapter also provides various rights of the victims, his family members and witnesses, it also gives provision for the establishment of a review committee which shall review the cases and submit its report to the Director-General of Police.

“Relief, compensation, and rehabilitation schemes for victims and witnesses or their family members,” according to Chapter VII. Under the provisions of Section 357-A of the Code of Criminal Procedure, it is mandatory to provide compensation to the victim or their family members within 30 days of the incident. The government is responsible for establishing secure rehabilitation or relief camps for all victims, ensuring their safety, providing medical assistance, meeting their basic living requirements, offering education for children, and other necessary provisions.

The provision for appeal is included in Chapter VIII of the Ordinance, which specifies that “as a matter of right, any judgement, sentence, or order may be appealed to the High Court within 60 days of the orders, sentence, or judgement.”

Chapter - IX empowers “the State Government to delegate its powers or to remove any difficulty by subsequent amendment; it also empowers the State Government to implement any other laws that are necessary in addition to and not in conflict with this Ordinance.”

Manipur’s Ordinance makes several regulations to cope with the horrible crime against humanity known as mob lynching. It is a crime that has not previously been defined anywhere expressly to deal with crimes perpetrated by crowd or mob; certain states have made some first moves to limit this difficult crime; difficult since mob has no face to identify, making it more problematic. All of the laws or ordinances passed by the Legislative Assembly to deal with mob violence are insufficient to remove, regulate, or inspire fear in the eyes of offenders. Now, a legislation with consistent means for dealing with lynching cases by mobs or violence is essential, and this requires that the law be enacted by the Central Government in order to remove this stigma from Indian society.

### **2.5.2 THE RAJASTHAN PROTECTION FROM LYNCHING BILL, 2019**

The legislative body of the State of Rajasthan has implemented a set of laws aimed at safeguarding the constitutional rights of vulnerable individuals, prohibiting acts of lynching, establishing specialised courts to ensure prompt prosecution of such crimes, facilitating the rehabilitation of victims and their families affected by mob lynching incidents, and addressing related matters and incidental issues pertaining to these offences. The Bill defines various terminology used in the Bill, such as ‘act of violence,’ authorities capable of prosecuting the acts are ‘DSP or ACP in metropolitan regions,’ and hostile environment. Section 2(d) defines lynching as “any act or series of acts of violence committed by a mob on the basis of religion, race, caste, sex, place of birth, language, dietary habits, sexual orientation, political affiliation, ethnicity, or aiding, abetting, or attempting an act of violence committed by a mob on the basis of religion, race, caste, sex, place of birth, language, dietetic practises, sexual orientation, political affiliation, or ethnicity, whether spontaneous or planned.” A ‘mob’ is a group of two or more people. Many other terms have been cleared by the Bill such as ‘offensive material’, ‘Rajasthan victim compensation scheme’, ‘victim’, ‘witness’ and many more.

“Detailed provisions for the duties of Nodal Officers, Police Officers, and District Magistrate,” is provided under Chapter II. Section 3(1) states that “the Director General of Police shall appoint a State Coordinator to prevent lynching who is an officer not lower than the rank of Inspector General of Police.”

Section 3(2) Every District Superintendent of Police is the District Coordinator, who is assisted in avoiding lynching cases and mob violence by one of the district's Deputy Superintendents of Police.

“Every police officer in charge in an area shall take all reasonable steps to prevent any act of lynching, including its incitement and commission,” stated under Section 4.

Section 5 states that “the duties of the District Magistrate are as follows: (1) whenever the District Magistrate has reason to believe that a situation has arisen in any area within his jurisdiction where there is an apprehension of lynching, he may, by order in writing, prohibit any act which in his opinion is likely to lead to the incitement and commission of an act of lynching.”

Section 5(2) The District Magistrate must do all in his ability to prevent creating a hostile environment towards an individual or group of people who are the victims of such conduct.

Chapter III states that “it shall be the duty of every police officer in charge of a police station to take all reasonable steps to prevent any incident of lynching, including its incitement, commission, and possible spread in the area under his jurisdiction, and can exercise his authority on a mob to cause it to disperse.” He must record the FIR in accordance with the applicable laws and may utilise his powers under Section 129 of the CrPC.

Section 8 (a) of the aforementioned legislation stipulates that individuals found guilty of causing simple harm to a victim through mob action may be subject to a maximum prison sentence of seven years, as well as a fine of up to one lakh rupees. In contrast, clause (b) of the same section establishes that those responsible for inflicting severe harm upon a victim may face imprisonment for a period of up to ten years, along with a fine not exceeding three lakh rupees. According to clause (c), in the event that the act leads to the demise of the victim, the offender would be subject to severe lifelong imprisonment and a monetary penalty ranging from a minimum of one lakh rupees to a maximum of five lakh rupees.

Furthermore, the Act includes penalties for conspiring, aiding or attempting to lynch, or obstructing the legal process. The Act also specifies procedures for investigation, prosecution, and trial. It also distinguishes between cognizable and non-cognizable offences, as well as bailable and non-bailable ones. It also provides for the establishment of special tribunals to hear incidents of mob lynching.”

The Act also offers “victim and witness protection, compensation, and free legal aid; rehabilitation programmes, the establishment of relief camps, shelters, medical benefits, child care services, and educational facilities.” The Act also delegated rights to different administrative authorities to take appropriate steps to suppress mob lynching in order to achieve the aforementioned goals. Although the state has made every effort to control the situations that may arise as a result of mob lynching cases, such as police authorities, trial processes, duty Magistrates, punishments or fines to offenders, victims are entitled to compensation and rehabilitation programmes, protection of witnesses and victims and their family members, and so on, all of these measures will take effect after the event of mob lynching cases and not before. The state has no idea when, where, or under what circumstances a crowd will take law and order into their own hands. The state cannot predict what will happen in the future, and all of the provisions in the Act are just steps to assure that the state will give you with so and so reliefs or remedies if an episode of mob violence occurs, and nothing more. The state appears impotent in this situation, since all conceivable measures are made to take action following the occurrence of mob action; it is just action and its reaction.

### **2.5.3 UTTAR PRADESH COMBATTING OF MOB LYNCHING BILL 2019**

The Bill is divided into IX Chapters, the first of which provides “various definitions and provisions dealing with mob violence; it defines ‘hostile environment’ as a coercive environment created against the victim, ‘mob’ as a group of two or more individuals assembled with the common intention of lynching, ‘lynching’ refers to any act of violence or aiding and abetting such an act; ‘offensive material’ refers to any material that can be fairly regarded as having been made to incite a crowd to lynch a person on the basis of religion, caste, race, language, or place of residence. ‘Victim’ implies any individual who has experienced bodily, mental, psychic, or monetary injury, and some other essential definitions have been included in the Bill witness etc.”

The responsibilities of police officers and District Magistrate are outlined in Chapter II. It is imperative for law enforcement personnel to exercise utmost caution in order to mitigate the occurrence of mob violence, encompassing both its initiation and perpetration. The individual in question will make a diligent and conscientious endeavour to prevent any instances of noncompliance with the provisions outlined in this legislation. In the event that the District Magistrate possesses a reasonable basis to suspect the potential occurrence of a lynching

incident within a specific area falling under his administrative authority, he is empowered to issue a written directive, thereby prohibiting any action that, in his judgement, is anticipated to contribute to the instigation and perpetration of a lynching act. The District Magistrate should make every effort within their capabilities to prevent the creation of an antagonistic environment towards individuals or groups who are the subjects of such incidents.

Chapter III discusses “prevention of acts leading to lynching and imposes a duty on every police officer to take all reasonable steps to prevent any incident of mob violence, identify offenders, obtain information regarding the likelihood of a lynching act.”

They must carry out their responsibilities without delay, in a fair, unbiased, and non-discriminatory way. A police officer should lodge the FIR under applicable sections of law against the offenders and may utilise such powers and authority as given under section 129 of the CrPC to achieve these goals.

Chapter IV deals with “offences and punishment for mob lynching.” It states that if a person is injured or suffers harm as a result of the actions of a crowd, the criminal faces imprisonment for up to seven years and a fine of up to one lakh rupees. If the victim suffers grievous harm, the offender faces ten years in prison and a fine of up to three lakh rupees; if the victim of mob violence dies, the offender or offenders, as the case may be, face life imprisonment and a fine of up to five lakh rupees. It also imposes the same punishment and penalties on the conspirators as if they had participated in the actual lynching. It also allows for a five-year jail sentence and a fine for hindering the court process or threatening a witness.

“Some other offences and their punishments, says Chapter V. “It punishes the transmission of objectionable content by any means for a term of not less than one year, which may be prolonged up to three years, as well as a fine of rupees 50,000. It also establishes a penalty for a guilty police officer who fails to perform his or her duties, which includes a one-year prison sentence, which can be enhanced to three years, and a fine of up to Rs. 50,000. Desertion of duty by a District Magistrate is also punished by imprisonment for a year, which can be extended to three years, and a fine of up to fifty thousand rupees.”

“Investigation, prosecution, and trial,” is provided under Chapter VI, “and for this purpose, the provisions of the CrPC shall apply to this Act.” Unless otherwise specified, all offences are cognizable, non-bailable, and non-compoundable. Any offence committed under this Act must be investigated by a police officer with the rank of inspector or above. The State

Government will designate Designated Judges to try offences penalised under this statute and shall follow the procedure specified by the CrPC for the hearing of warrant proceedings. This Chapter also provides for the entitlements of victims and witnesses throughout the legal proceedings, such as the right to notice, free legal aid, protection, and security. It also provides for the formation of a review committee, which will review the cases and report to the Director-General of Police.

“Relief, compensation, and rehabilitation schemes for victims and witnesses or their family members,” is provided under Chapter VII. According to section 357-A of the CrPC, compensation must be paid to the victim or their family members within a period of 30 days from the occurrence. The state should build rehabilitation or relief camps in secure areas for all victims, including their security, medical care, living necessities, education for children, and so forth.

The right of appeal is specified in Chapter VIII of the Ordinance, which states that any verdict, sentence, or order may be appealed to the High Court as a matter of right within 60 days after the orders, sentence, or judgement.

Chapter - IX, authorises the State Government to delegate its powers or to eliminate any impediment via later revision; it also authorises the State Government to execute any additional laws that are required in addition to and not in conflict with this Act.

#### **2.5.4 THE WEST BENGAL PREVENTION OF LYNCHING BILL, 2019**

It proposes three levels of punishment: maximum three years in prison and a fine of up to Rs 1 lakh if the victim suffers “hurt,” ten years in prison and a fine of up to Rs 3 lakh if the victim suffers “grievous hurt,” and “stringent life imprisonment and fine not less than Rs 1 lakh and up to Rs 5 lakh” if the victim dies. Lynching is defined as an act or attempt of violence perpetrated by a mob, targeting individuals based on various grounds such as religion, race, caste, sex, place of birth, language, dietary practises, sexual orientation, political affiliation, ethnicity, or any other similar basis. The act requires the creation of a nodal officer to conduct periodic assessments of local intelligence inputs on possible flashpoints, and lynching events must be probed by an officer with a level no lower than that of an inspector. It also asks for witness protection and victim restitution, and states that any claim of witness threat, coercion, or inducement must be brought to the attention of a court within 24 hours.



The statute mandates the establishment of a nodal officer to perform periodic evaluations of local intelligence inputs on potential flashpoints, and lynching cases must be investigated by an official no lower than an inspector. It also requests witness protection and victim reparations, and stipulates that any accusation of witness threat, coercion, or inducement must be brought to a court's notice within 24 hours.

Victims would be protected by the state under the new Bill, and under the Legal Services Authorities Act 1987, victims would be able to choose any advocate from the legal aid panel. Furthermore, the state would offer free medical treatment and compensation via the Compensation Scheme. According to the bill, unless there are "special circumstances," lynching incidents will only be examined by police officials with the level of inspector or above.

## CHAPTER 3

### THE INDIAN LEGISLATURE'S CHALLENGES AND ISSUES

#### 3.1 LYNCHING IN US

According to NAACP records, there were 4,743 lynchings in the United States between 1882 and 1968. Although other sources, including the exhaustive lynching report from the Equal Justice Initiative, provide somewhat different data, it is hard to know for sure how many lynchings occurred since there was no official monitoring. Many historians believe that the actual number is underreported. Mississippi has the most recorded lynching cases of any state during that period with 581. Texas finished third with 493, while Georgia took second place with 531. Not every state had lynching instances. Lynchings have not been reported in Arizona, Idaho, Maine, Nevada, South Dakota, Vermont, or Wisconsin. Black people made up 3,446 of those who were lynched, or over 72%, making them the bulk of lynch victims. However, they were not the only lynching victims. Some white individuals who backed Black people or opposed lynchings were murdered. Immigrants from Mexico, China, Australia, and other countries were also lynched. White mobs regularly utilised tenuous criminal accusations as justification for lynchings. A frequent justification for hanging Black males was perceived sexual impropriety with white women. Accusations of rape were often exaggerated. These assertions were used to support segregation and maintain stereotypes of angry, violent, and hypersexual Black males. Hundreds of Black individuals were killed based on claims of other crimes including murder, arson, robbery, and vagrancy. Many lynching victims died as a result of their crimes going unpunished. They were killed because they disobeyed racial expectations or social conventions, such as treating white people with less respect than white people believed they should be treated with.

When Black Americans fled the South to flee the fear of lynching cases, a historical movement known as the Great Migration, people began to oppose lynching instances in a number of ways. They participated in neighbourhood activities including the boycott of businesses owned by white people. Anti-lynching campaigners like Ida B. Wells wrote newspaper essays to expose the horrors of lynching.

A number of important civil rights groups, like the NAACP, were also established at this period to combat racial violence.

The NAACP bravely campaigned to put a stop to lynching. The vivid pictures of Jesse Washington's lynching were published by Crisis editor W.E.B. Du Bois in a pictorial essay titled "The Waco Horror" in the July 1916 edition.

Black teenager Washington, 17, was murdered by a white mob in Waco, Texas, after they accused him of murdering Lucy Fryer, a white lady. Du Bois was able to utilise postcards showing Washington's death as a weapon against their creators in order to revive the anti-lynching campaign. The Crisis' readership climbed by 50,000 over the course of the next two years, and we were able to fund \$20,000 for an anti-lynching campaign.

The NAACP published *Thirty Years of Lynching in the United States, 1889-1919* in 1919 to increase public awareness of the prevalence of lynching. Data from the research show the shocking statistics by amount, year, state, race, sex, and alleged infraction.

Congressman Leonidas Dyer of Missouri introduced the Anti-Lynching Bill, sometimes referred to as the Dyer Bill, for the first time in Congress in 1918. Since 1919, the NAACP has supported the legislation's passage regardless of obstacles like a Senate filibuster. The NAACP persisted in pushing for national anti-lynching legislation throughout the 1930s.

According to NAACP Executive Secretary Walter White, the Great Migration, shifting public sentiment, and anti-lynching lobbying all contributed to a decline in lynching rates nationwide in the 1930s. 1952 was the first complete year without a reported lynching.

James Byrd was shackled to a vehicle by three white supremacists and dragged to death in the streets of Jasper, Texas, in 1998. In 2020, when Ahmaud Arbery was out on a run in Brunswick, Georgia, he was shot and died. Three white men are accused of killing Arbery and claiming that he was trespassing.

George Floyd's lynching on video represented a modern-day lynching. Before shooting Floyd in broad daylight, Derek Chauvin, a police officer, held him down for more than nine minutes with a knee on his neck.

Walter White, the current assistant secretary of the organisation, started out as an investigator in 1918. Because of his fair complexion and straight hair, he was effective in conducting lynching and racial riot investigations in the South. Despite being Black, he was able to “pass” as white and interact with them. Through 1927, White would investigate 41 lynching instances.

### **The Lynching of Mary Turner, May 19, 1918 – Georgia**

One of the lynching cases Walter White looked into for the NAACP was the lynching of Mary Turner in Brooks-Lowndes County, Georgia. Hampton Smith, the abusive plantation owner, was slain by gunfire. Hayes Turner, Mary’s husband, was killed after a week-long manhunt. Mary actively protested her husband’s murder, denied that he had any involvement in Smith’s killing, and threatened to have gang members jailed.

Mary was taken to Folsom Bridge on May 19, 1918, where a mob of several hundred people bound her ankles, hung her upside down from a tree, doused her in petrol and motor oil and set her ablaze. When a mobster sliced into her abdomen with a knife, she was still alive. Her unborn child was trampled down and crushed. Mary’s body was covered in dozens of bullet holes.

The lynching was described in *The Crisis*’ September 1918 issue. Tennessee’s execution of Jesse McIlherron in February, 1918. Another Walter White inquiry for NAACP was into the lynching of Jesse McIlherron. Jesse was a Black man who took offence at white men’s slights and taunts. Sheriff dreaded him because he maintained an arsenal. He got into a fight with three young white males who insulted him on February 8, 1918. Two of the males were shot and killed by McIlheron after threats were made. McIlherron was shot and killed by a mob after making his way to the home of a Black preacher who helped him escape. McIlheron was apprehended and killed. The torture started after McIlherron was shackled to a hickory tree and a fire was started. The mob entertained themselves by placing heated iron bars close to McIlherron, first without touching him. He grabbed a bar, and as it wrenched away from him, the inside of his hand followed. The twenty minute true torture started after that. Jesse maintained his composure while his flesh was subtly scorching during that period. He blasted the people who tormented him and mocked the mob’s efforts to

crush his spirit until he was almost out of breath. The Crisis included a report about Jesse's lynching in its May 1918 issue.<sup>50</sup>

### 3.2 LYNCHING IN INDIA

#### **Lynching in India:**

There has been various lynching in connection to dairy animals' vigilante brutality in India since 2014,<sup>51</sup> primarily including Hindu hordes "lynching Indian Muslims and Dalits". Some outstanding instances of such assaults incorporate the "2015 Dadri crowd lynching"<sup>52</sup> the 2016 Jharkhand horde lynching, and the 2017 Alwar crowd lynching when a gathering of dairy animal's vigilantes murdered a 65 years old Muslim person Rakbar Khan, Baksi and Nagarajan 2017 and most recently shaheenbaag related to CAA 2019 and Palghar lynching case".

**Lynching of Khairlanji:** The killings of four members of the Scheduled Caste on September 29, 2006, by the residents of Khairlanji are known as the Kherlanji Massacre (or Khairlanji Massacre). The killings happened in a tiny town called Kherlanji in the Indian state of Maharashtra's Bhandara district.<sup>53</sup>

**Lynching of Dimapur:** A swarm of around 7500 people stormed the Central Jail of Dimapur on May 15, 2015, and took the unlucky victim hostage. The victim was a prisoner accused of rape who was mercilessly beaten up by the crowd before being killed by stripping. Another injured person was purportedly accused of subjecting women to sexual violence with the intention of exacting revenge; the throng hung the offending individual.<sup>54</sup>

**Lynching of Mohammed Akhlaq:** The horrific lynching of Mohammed Akhlaq by his fellow villagers is said to be India's first instance of a cow vigilantism lynching. Gautankwad's initial victim was Mohammed Akhlaq. The residence of Mohammed Akhlaq in the Uttar Pradesh hamlet of Bisara, close to Dadri, was crowded with locals. They said that the family had killed and eaten the flesh of a calf that had just gone missing in their

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<sup>50</sup> 'History of lynching in America' (NAAACP) < <https://naacp.org/find-resources/history-explained/history-lynching-america>> accessed 25 June 2023

<sup>51</sup> 'Cowboys and Indians An udderwordly debate' (*The Economist*, 20 August 2016) < <https://www.economist.com/asia/2016/08/20/cowboys-and-indians>> accessed 25 June 2023

<sup>52</sup> Saif Khalid, 'Indian mob kills man over beef eating rumour' (*Aljazeera*, 1 October 2015) < <https://www.aljazeera.com/news/2015/10/1/indian-mob-kills-man-over-beef-eating-rumour>> accessed 25 June 2023

<sup>53</sup> 'Khairlanji massacre' (*Wikipedia*) < [https://en.wikipedia.org/wiki/Khairlanji\\_massacre](https://en.wikipedia.org/wiki/Khairlanji_massacre)> accessed 25 June 2023

<sup>54</sup> Suvojit Bagchi, 'Dimapur Lynch victim's family awaits his Naga wife' (*The Hindu*, 11 March 2015) < <https://www.thehindu.com/news/national/Dimapur-lynch-victim%E2%80%99s-family-awaits-his-Naga-wife/article60330733.ece>> accessed 25 June 2023.

community. They aggressively attacked 52-year-old Akhlaq and his 22-year-old son Danish after dragging them out of the house. They thrashed the pair with sticks and kicked and punched them. While Danish narrowly avoided death and suffered major injuries, Akhlaq passed away.<sup>55</sup>

**Lynching of Chatra, Jharkhand:** The mob violence that resulted in the deaths of two Muslims in Chatra, Jharkhand in 2016 as they were working as animal dairy merchants. Both were killed based on the rumour that they were transporting cows, but the truth was quite different: they were actually transporting oxygen cylinders for sale in the Chatra market. When a mob arrived, they were accused of transporting beef, so they were hanged.<sup>56</sup>

**Lynching of Alwar, Rajasthan:** Pehlu Khan, a Muslim dairy owner who was 55 years old, was severely attacked by the cow security vigilante mob for the alleged updates on ox-like transporting. After some time, Mr.Pehlu Khan gave in to his injuries. Later, following an investigation, the police clear everyone of all charges.<sup>57</sup>

**Lynching of Pratapgarh, Rajasthan:** A dissident guy named Zafar Khan intervened when many rural village Panchayats officials tried to scare away women who walked to be freshened in the open field during the day by taking their pictures. In spite of his efforts to refrain the people from taking images of pooping women, the authorities beat him with sticks and kicked as retaliation. After some time, he gave in to the injuries.<sup>58</sup>

**Lynching of Junaid Khan:** Four young Muslim boys, Junaid, his brother Hasim, pals Moin and Mausim, were attacked in a third coach of a Mathura-bound train in 2017 while they were travelling back from Delhi after Eid shopping. Some customers ordered them to leave the area since they were apparently playing ludo while seated on the chairs. The men were soon misbehaving and the four were being abused, so the four of them made the decision to off the train at Faridabad. Due to the commotion at the train station, they were unable to exit the coach. The claimed verbal and physical assault persisted, and things allegedly grew

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<sup>55</sup> 'The lynching of Mohammed Akhlaq' (*cjp*, 5 February 2018) < <https://cjp.org.in/mohammed-akhlaq-lynching-case-timeline>> accessed 25 June 2023

<sup>56</sup> Manob Chowdhury, 'Cow Vigilantism: Families contest Jharkhand Government's claims on Latehar lynching cases' (*scroll.in*, 23 March 2016) < <https://scroll.in/article/805548/latehar-lynching-cases-good-step-to-stop-cow-slaughter>> accessed 25 June 2023

<sup>57</sup> 'Alwar Lynching: Clean chit to all six accused named by Pehlu Khan in dying declaration' (*The Indian Express*) < <https://indianexpress.com/article/india/alwar-lynching-gau-rakshaks-cow-vigilance-clean-chit-to-all-six-accused-named-by-pehlu-khan-in-dying-declaration-4843051>> accessed 28 June 2023

<sup>58</sup> 'Activist Zafar Khan lynched to death in Rajasthan's Pratapgarh for objecting photography of women defecating in open' (*The Indian Express*, 17 June 2017) < <https://indianexpress.com/article/india/activist-zafar-khan-lynched-to-death-in-rajasthans-pratapgarh-for-objecting-photography-of-women-defecating-in-open-4707822>> accessed 25 June 2023

worse when one of the attackers pulled a knife on Junaid when he attempted to step in and stop them from abusing his brother and friends.

At the Asaoti Railway Station halt, Junaid was thrown off the train and later pronounced dead at a nearby hospital.<sup>59</sup>

**Lynching of Ayub Pandit, Dy. Supt. Police:** Before Article 370 was repealed, communal violence in the state of J&K was a common occurrence, often in the guise of religion or nationalism. A similar occurrence happened outside a mosque in Srinagar, when a crowd lynched a police officer of their choice during the evening prayer due to his secular character and taking impartial action against them, he has alienated his own community.<sup>60</sup> During the holy holiday of Ramzan in the month of June, Dy. S.P. Mr. Ayub Pandit was murdered in front of a mosque by a violent crowd that included professional operatives of Pakistan and al-Qaeda.

Asst. S. P. During the celebration, Mr. Ayub Pandit was assigned the responsibility of upholding “law and order”; all of these duties were carried out under the direction of separatist Mirwaiz Umar Farooq, who was also chosen to serve as the mosque’s administrator. Around noon, several people began to yell in support of Pakistan and wave Pakistani flags in support of Zakir Musa, an Al-Qaeda agent working out of Pakistan. Dy. S.P. Mr. Ayub Pandit began filming the supporters of Pakistan who were yelling on camera. He did so in front of the audience, who then assaulted him. When Dy. S.P. pulled out his handgun to defend himself, he fired three rounds into the air, but the crowd stole the gun and continued to attack him with stones and swords until the very end.<sup>61</sup>

**Lynching of Rajesh:** Conflicts were growing in Thiruvananthapuram, Kerala, especially between the RSS (BJP) and CPM factions. There was a brutal struggle that resulted in the death of Mr. Rajesh, an elderly RSS supporter.<sup>62</sup>

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<sup>59</sup> ‘Junaid Khan’s Lynching: A timeline of his case since 2017’ (*cjp*, 22 June 2021) < <https://cjp.org.in/junaid-khans-lynching-a-timeline-of-his-case-since-2017>> accessed 25 June 2023

<sup>60</sup> Sandipan Sharma, ‘DSP Ayub Pandith lynched in Srinagar: Barbaric event shows Kashmiris have abandoned cultural, religious ethos’ (*Firstpost*, 23 June 2017) < [firstpost.com/india/dsp-ayub-pandith-lynched-in-srinagar-barbaric-event-shows-kashmiris-are-stepping-away-from-their-cultural-religious-ethos-3738975.html](https://www.firstpost.com/india/dsp-ayub-pandith-lynched-in-srinagar-barbaric-event-shows-kashmiris-are-stepping-away-from-their-cultural-religious-ethos-3738975.html)> accessed 25 June 2023

<sup>61</sup> ‘Srinagar DSP lynching case: J&K police arrest 20 accused in killing of DSP ayubPandith’ (*The Times of India*, 24 July 2017) < <https://timesofindia.indiatimes.com/india/srinagar-dsp-lynching-case-jk-police-arrest-20-accused-in-killing-of-dsp-ayub-pandith/articleshow/59734428.cms>> accessed 25 June 2023

<sup>62</sup> ‘Kerala Political killings: ArunJaitley visits slain RSS worker’s family in Thiruvananthapuram, CPM stages protest’ (*Firstpost*, 6 August 2017) < <https://www.firstpost.com/politics/kerala-political-killings-arun-jaitley->

**Lynching of Litan Miah, Tripura:** A Hindu lynched a Muslim man named Litan Miah, age 26, in Tripura's Sepahijala area. Sentu Debnath (40), and Amal Chandra Das (50), two individuals, were detained in relation to the murder of Miah, a Tarapukur inhabitant, in the vicinity of the Jatrapur police station in the Sonamura district. While assaulting Miah, the Hindu mob claimed that Miah had gone to the area to steal cows for smuggling. According to the authorities, they were unable to get any proof to back up the attackers' claims.<sup>63</sup>

**June 8, 2018, Mob lynching case of Karbi Anglong:** Nilotpal Das (age 29) and Abhijeet Nath (age 30) had gone to a picnic location at the Kangthilangso waterfalls near the Dokmoka Police Station in Karbi Anglong, Assam, on June 8, 2018. A group of angry villagers in Panjuri Kachari stopped their vehicle as they were driving home because they believed they were kidnappers. Nath was a businessman from Guwahati, whereas Das was a native who lived in Mumbai and worked as a sound engineer.

According to footage shared on social media, the locals assaulted their car, dragged the two young men out, and bludgeoned them to death while they begged to be set free.<sup>64</sup>

**April 16, 2020, Mob lynching case of Palghar, Maharashtra:** In the Palghar incident, a mob is accused of lynching two sadhus and their driver on the evening of April 16, 2020. On the night of April 16, while under lockdown and going in a vehicle to a funeral in Surat, Gujarat, the three victims from Kandivali, Mumbai, were ambushed and murdered by a mob in Gadchinchile village in front of a police squad.

The victims were identified as the driver Nilesh Telgade (30), Chikne Maharaj Kalpavrukshagiri (70), and Sushil Giri Maharaj (35). Police did not take any concrete action to protect these innocent men throughout the entire incident, as evidenced by the fact that they did not use force to disperse the crowd and one video even reveals that a police officer actually pushed saints into the crowd when they requested protection.<sup>65</sup>

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visits-killed-rss-workers-family-in-thiruvananthapuram-cpm-stages-protest-3899629.html> accessed 25 June 2023

<sup>63</sup> '26 year old lynched by Hindu mob in Tripura, two men arrested' (*India North East India*, 29 June 2023) <<https://maktoobmedia.com/india/26-year-old-muslim-lynched-by-hindu-mob-in-tripura-two-men-arrested>> accessed 25 June 2023

<sup>64</sup> 'Assam mob lynching case: Police file chargesheet, name 48 persons' (*The Times of India*, 2 September 2018) <<https://timesofindia.indiatimes.com/india/assam-mob-lynching-case-police-file-chargesheet-name-48-people/articleshow/65637369.cms>> accessed 25 June 2023

<sup>65</sup> 'Palghar Lynching Case: Supreme Court Seeks Probe Report From Maharashtra' (*NDTV*, 3 May 2020) <<https://www.ndtv.com/india-news/palghar-lynching-case-supreme-court-seeks-probe-report-from-maharashtra-2222353>> accessed 25 June 2023



The similarities between lynching cases in the US, the UK, and India show that mobs in all three countries frequently act in a barbaric manner during lynching cases, and unless the problem is addressed at an early stage, the frequency and severity of the crime may continue to rise quickly.

A critical issue is the recent spike in the spread of false information through social media platforms, which has had catastrophic consequences as shown in the example of violence against the Rohingya in Myanmar.

### **3.3 MOB LYNCHING AND ITS LAWS IN OTHER COUNTRIES**

James E. Cutler's book *Lynch Law: An Investigation into the History of Lynching in the United States* was inspired by a discussion he gave in 1905. According to others, the nation's misbehaviour has been compared to a lynching. No other nation with a high degree of development advancement practises hordes of people catching individuals involved in misbehaviour and killing them without using the legal system. There are mob and horde executions everywhere, but in the US, there isn't a sequential framework of what could be considered well-known equity that is comparable to lynch-law procedures. Cutler's claim that lynching was a uniquely American phenomena befitting an educated culture predominated anti-lynching arguments around the turn of the century. There was a reason for concern. Between one and 200 people were killed by lynch law annually in the 1890s, with African Americans making up the great bulk of the casualties.<sup>66</sup> Understanding black group membership requires an understanding of actual lynching cases and cutting-edge brutality committed against black males, whether by the state or a well-armed mob. Although the word "lynching" conjures up pictures that are helpful for network setup, in this particular instance, we should think about the usefulness of describing the present killing of bad individuals by law enforcement or security professionals.

There are a lot of nations that have attempted to implement anti-lynching legislation and made steps to stop these occurrences.

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<sup>66</sup> James E. Cutler, *Lynch-Law: An Investigation into the History of Lynching in the United States* (Arno Press, 1969)

### **3.3.1 International Scenario:**

Mob-lynching is a crime that affects countries other than India, and the international scenario in that regard is as follows:

**United States of America:** Even the most powerful nation on Earth is not immune to the crime of mob-lynching. The crime of mob-lynching occurred at its height in America during the Civil War and World War II, or from 1880 to 1940, when thousands of Black Africans were cruelly murdered as a result of racial and territorial disputes, according to the Equity Justice Initiative's report. According to the research, the effects of the terror lynching cases are still felt today in society. African Americans continue to live in appalling conditions in terms of their growth, economic prosperity, and educational success. The truth is that the problem was never effectively handled by the involved American authorities, which has damaged the justice system's credibility and openness. According to the EJI, 2013 Report on Slavery in America, racial slavery, which is also a byproduct of lynching cases, is still present in America. Alabama, Arkansas, Florida, Georgia, Texas, and Virginia are the primary states that have been identified as having an active lynching problem.<sup>67</sup>

#### **3.3.1.1 National Association for the Advancement of Colored People (NAACP):**

The National Association for the Advancement of Coloured People (NAACP) is a civil rights organisation in the United States that was founded in 1909 by a group that included W. E. B. Du Bois, Mary White Ovington, Moorfield Storey, and Ida B. Wells in an effort to advance justice for African Americans. White Americans in the United States actively engaged in racial injustice against African Americans between 1882 and 1968. There were at least 5,000 lynching cases only in the southern states. Our government allowed barbarism to continue while maintaining no organisation or discipline and showing little concern for the problem of lynching. They required a voice since the administration would not give black people one. Civil rights leaders of the day viewed the NAACP as a less activist organisation than its sister group and forerunner, the National Afro-American League (NAAL). The Niagara Movement of Dubois, which subsequently evolved into the NAACP, was preceded by the NAACP. For the Niagara Movement to succeed, control was vital. With W.E.B. Dubois and William Trotter in charge, it was one of the most well-known social rights organisation. The largest

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<sup>67</sup> 'Mob lynching: Tainting the Democracy' (*Legal Service India*) <<https://www.legalserviceindia.com/legal/article-1634-mob-lynching-tainting-the-democracy.html>> accessed 25 June 2023

gathering took place in July 1905. The organisation was a long-awaited reaction to America's ongoing systemic denial of human rights since Reconstruction ended. Philip Dray asserts that the founding of the NAACP was one of the rare occasions in the history of anti-lynching defence when it was more advantageous. The group appealed to a sense of resolution that had been missing from high contrast Americans' lives with its concurrent views that basic rights were wrongfully withheld to black people and that disruption was required to verify them. African Americans were given the forum they deserved by the NAACP. If they attracted a sizable following, they might exert pressure on the administration to make reforms alongside the Anti-Lynching Bureau. The NAACP put a stop to protracted years of white oppression of black people by fusing the abolitionists' humanistic soul with the aggressive race consciousness. The degree of constant dread that black residents felt is astounding. In any event, the NAACP sought to alter these mentalities as well as Americans' way of life. In various recorded justifications for the shift in lynching legislation concerns, the early NAACP serves as the primary expert. The NAACP was the primary organisation for black advancement when it was founded in 1909. Although they were small and transient, a number of groups, such as the Afro-American League and the Nigeria Development, served as forerunners and filled in as outlines. Different organisations, like Booker T. Washington's Tuskegee Institute, settled on political concerns rather than closely examining lynching. Other developing entertainers, like Ida B. Wells and her colleagues, were arranged even less precisely. The early NAACP would be the place to look if the change in lynching governmental concerns resulted from the actions of a well-organized growth.

**3.3.1.2 Dyer Anti-Lynching Law 1918:** As a result, lynching will be considered a criminal offence by the government, giving the US the right to investigate such incidents. It demanded that lynchings be tried in government courts and that state officials who failed to stop lynching cases be charged with crimes. Early in the 20th century, mob lynching cases were all too common, particularly in the South. In 1916, NAACP prioritized advocating for anti-lynching legislation and formed a special committee to bring public awareness to this unconscionable practice. A partnership with Anti-Lynching Crusaders led to rallies, the mobilization of volunteers, and targeted media advertisements. A white Republican congressman from Missouri named Leonidas Dyer sponsored a bill to stop lynching cases in Congress in 1918. Dyer, a progressive who represented a district with a high concentration of African Americans, was abhorred by the carnage brought on by the racial unrest in St. Louis and the persistence of lynching cases in the South.

On January 26, 1922, the House of Representatives approved the Dyer Bill. The measure was brought to the Senate floor for a vote by the Senate Judiciary Committee, but Southern Democrats' filibuster prevented it from passing. It took an additional ten years before attempts to enact a comparable piece of law were made. All subsequent anti-lynching legislation advocated by the NAACP into the 1950s was influenced by the Dyer Bill, including the 1935 Costigan-Wagner Bill.<sup>68</sup> It has been approved by the House of Representatives or signed by the president as of February 24, 2019. The measure proclaimed lynching to be a crime that the government has authorised. There were various regulations pertaining to lynching offenders being prosecuted. It has been approved by the House of Representatives or signed by the president as of February 24, 2019. The measure proclaimed lynching to be a crime that the government has authorised. There were various regulations pertaining to lynching offenders being prosecuted.

The legislation also suggested the following unusual activities:

1. Public servants who fail to guarantee equal protection to everyone risk facing legal action in government courts.
2. This act did not exclude foreign tourists, who were subject to prosecution under state or domain laws in the same manner that domestic visitors were.<sup>69</sup>

### **3.3.1.3 Civil Rights Act 1964**

An act enforcing the right to vote, giving district courts in the United States jurisdiction, providing injunctive relief against discrimination in public accommodations, allowing the Attorney General to file lawsuits to defend constitutional rights in public facilities and public education, extending the Commission on Civil Rights, preventing discrimination in federally funded programmes, and creating a Commission on Equal Employment. There are eleven titles or sections in the Civil Rights Act of 1964. A number of significant court decisions have been brought about by certain Titles, particularly those that forbid discrimination in employment (Title VII), federal financing (Title VI), and public accommodations (Title II). Other Titles, which tended to be procedural in character and in the years thereafter have received few court interpretations, have not. The instances in which the US Supreme Court or

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<sup>68</sup> 'History of lynching in America' (NAAACP) < <https://naacp.org/find-resources/history-explained/history-lynching-america> > accessed 25 June 2023

<sup>69</sup> [https://en.m.wikipedia.org/wiki/Dyer\\_Anti-Lynching\\_Bill](https://en.m.wikipedia.org/wiki/Dyer_Anti-Lynching_Bill)

a lower court rendered significant rulings that created precedent for interpreting the act's provisions are listed under certain Titles.<sup>70</sup>

#### **3.3.1.4 Anti-Lynching Bill 2018**

Despite being born a slave, social critic and journalist Ida B. Wells published “Southern Horrors” in 1862, which marked the beginning of the anti-lynching movement in 1892. The NACCP provided a study stating that the United States is the only advanced country whose government for 30 years (1889–1919) allowed lynching. As a result of these initiatives, Missouri Republican Rep. Leonidas C. Dyer first proposed anti-lynching legislation in 1918, which said that everyone wronged by a mob should get equal protection under the law. An essay about lynching’s atrocities and the rules and regulations in place to prevent it was published in the magazine of the NACCP. The NACCP went one step farther in 1930. Under Walter White’s guidance, new initiatives to enact federal anti-lynching legislation were launched. Additional bills were approved in 1937 and 1940. At the time, lynching’s horrors were coming to light more often. In 1935, there were two anti-lynching art exhibits in New York. Despite these attempts, laws did not succeed in stopping the lynching despite the abundance of photos that depicted the envisioned lynching incident. Since the end of slavery, lynching has been used as a form of racial terrorism in the United States to terrorise and control African Americans. The passing of federal law was a critical step towards acknowledging the suffering of the decade and the federal government’s responsibility not being able to act in 2018. The Justice for Lynching Victims Act of 2018 was unanimously passed by the Senate on December 21. Black senators Tim Scott, Kamla Haris, and Cory Booker sponsored this legislation in June. This law designated lynching as a federal hate crime and described it as “wilful bodily harm to any other person based on race, colour, religion, or nationality of any origin. “This law gives judges the authority to impose additional sentences and maintain them in addition to any prior charges when determining the punishment for people who commit such acts. However, because the House did not adopt the bill, it was abandoned. If two or more people are found guilty of murder based on someone’s race, colour, religion, or nation, they could face life in prison under this bill. If the lynching victim sustains bodily harm, the perpetrator could also face at least 10 years in prison.

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<sup>70</sup> ‘The Civil Rights Act of 1964: A Long Struggle for Freedom’ (*Library of Congress*) <<https://www.loc.gov/exhibits/civil-rights-act/epilogue.html>> accessed 25 June 2023

**3.3.1.5 Emmet Till Anti Lynching Act 2020:** It permits an act to be prosecuted as a lynching when a person conspires to commit a hate crime that results in death, serious bodily injury, and other serious harms. The law is named after the 14-year-old boy who was abducted, brutally beaten, and shot by a mob of white men in Mississippi in 1955 before they threw him into a river. Even while it has been a long time coming, the bill's adoption nonetheless has significant symbolic weight and will offer federal prosecutors another weapon to pursue some of the nation's most heinous hate crimes. In other words, the measure increases the severity of the existing federal hate crime statutes. Lynching is now considered a federal hate crime under the Emmett Till Anti lynching Act, a significant federal legislation in the United States. The act updates the Matthew Shepard and James Byrd Jr. Hate Crimes Prevention Act and earlier hate crime statutes to include lynching as any planned, bias-motivated attack that results in death or serious bodily harm. The United States House of Representatives and Senate both approved it on February 28, 2022, and President Joe Biden signed it into law on March 29, 2022.

#### **3.4 NEED OF PARTICULAR AND SPECIFIC LAW RELATED TO MOB LYNCHING**

The current legal system in place to prevent incidents such as mob lynching is insufficient to achieve significant change. Their operational usefulness is highly restricted in both application and execution aspects, and hence the control systems' feasibility is ineffective. As a result, a new and enhanced legal framework is necessary that can aid in introducing a more specialised form of operation and execution options in the instance of immoral behaviour such as mob lynching. The presence of specialised laws makes the entire process of recognising growth extremely steady, introducing superior operating jurisdictions for the selected components.<sup>71</sup> Such regulations are also important in fostering equality and establishing a more genuine legal duty in relation to the possibility of mob lynching cases. A crucial factor that is limited to produce some standards for the occurrence of similarly operated incidents is the new and devoted legal systems. Another critical component in the establishment of a competent legal structure is the presence of some big gaps in the existing legal framework. The present legal components are not nearly capable of producing improved results and hence are largely ineffectual in improving the process of managing mob lynching.

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<sup>71</sup> S. Gopinath, 'Appropriating Bodies: Discourses on Nationalism in India' (2017) 6(1), *Hyper Cultura*<Download citation of Appropriating Bodies: Discourses on Nationalism in India (researchgate.net)> accessed on 24 June 2023

These are the motivations for laws such as MASUKA. These legislation and laws are based on existing requirements within the court system, which aids in promoting better results overall. As a result, the overall impact on the system's constitutional and human rights commitments is beneficial.

### **3.4.1 LEGISLATURE:**

First, there are three branches of government: the legislative, the executive, and the judiciary. The executive is the organ of government that fundamentally takes care of the capacity of utilisation and organisation, while the judiciary is the organ of government that upholds the law. Legislation is the most important and fundamental instrument of government. A governing body is more than just a legislative body. Nonetheless, one of the council's components is legislation. It is the epicentre of all proper political procedure. Without an agent, competent, and viable assembly, a vote-based system is meaningless. The legislative body assists individuals in considering the agents accountable. The term parliament refers to the national legislative body. The state legislature is the governing body of the states. India's parliament is divided into two houses. A bicameral legislature exists when there are two places of governing body. The legislature is divided into two chambers: the Council of States (Rajya Sabha) and the House of People (Lok Sabha). The states have the option of forming either a unicameral or bicameral assembly under the terms of the Constitution. Each state has the authority to enact legislation exclusive to their state.

Legislators are in charge of crafting laws and improving results for their particular populations. Enabling such measures is also beneficial in building a link between population wants and the availability of effective laws and regulations. Legislators networks of rules are important in developing a reasonable approach throughout the process. As a result, greater governance objectives and results are encouraged. Legislators can be held accountable for enacting appropriate rules that will aid in the creation of an anti-mob lynching culture across the country.<sup>72</sup> A number of concerns and issues concerning mob lynching have been brought before Indian legislation. One of the most basic types of challenge is dependent on the nature and design of these occurrences. The majority of mob lynching cases in India are motivated by religious feelings, therefore it only takes a little triggering move to start a chain reaction.

Life is priceless, and the cutting-edge state is bound by a sacred commitment to protect its kind's life. Article 21 of the Indian Constitution imposes a risk on the state in order to

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<sup>72</sup> A. Kaushik, 'RADICALIZATION IN INDIA: DIAGNOSIS AND REMEDIES' (2018).

safeguard the lives of a large number of people. Regardless, the continued expansion of mob lynching and killing incidents is a test for the legislature. These transgressions should be investigated in order to guarantee that the majority governs the country. Through this investigation, we determined that the force with which the occurrences of man butcher are increasing necessitates the adoption of novel legislation to handle the offence of mob lynching and slaughter. Furthermore, the country's customary law is insufficient to handle such offences. The legislature is the principal instrument of government, and it is its responsibility to enact laws that are appropriate for the condition in society and to resolve issues. There are several laws in various fields such as constitutional law, IPC, Crpc, family law, taxation law, labour law, and so on. There are several provisions in the IPC and Crpc dealing with mob lynching. However, these regulations are insufficient to address the issue of mob lynching. Aside from that, the legislature has several concerns and obstacles in dealing with mob violent situations.

Nonetheless, there are several opportunities for developing a stronger operational duty for sustaining and managing a quality-centric operation. The Indian legal system contains all of the necessary components for regulating mob lynching cases. However, because they are rarely practised adequately, the ultimate outcomes vary greatly. Throughout the process of building anti-mob lynching legislation, a proper form of design and an enhanced quality consideration are required.

### **3.5 THE REQUIREMENT FOR PARTICULAR AND SPECIFIC LAW RELATED TO MOB LYNCHING**

Despite the Supreme Court's directive, lynching cases and vigilante attacks have continued. On the contrary, numerous occurrences from throughout the country have been recorded. The vast majority of these attacks were committed in the guise of cattle protection. However, lynching cases have been recorded on religious holidays such as Ram Navami (Bihar and West Bengal), or during the offering of Namaz (Gurugram), and against persons just for "looking" too much like Muslims on trains (Uttar Pradesh and Haryana). People have lately been lynched in Assam, Gujarat, and Tripura after reports of child trafficking spread over social media and messaging applications. Unfortunately, rumour mongering has been a common thread in the majority of lynching incidents, sometimes through comments disseminated on social media, where the mobs' fervour has been fanned without any attempt to check the validity of the charges.



The presence of specialised laws makes the entire process of recognising growth extremely steady, introducing superior operating jurisdictions for the selected components.<sup>73</sup> The present legal components are not nearly capable of producing improved results and hence are largely ineffectual in improving the process of managing mob lynching. These are the motivations for laws such as MASUKA.

These legislation and laws are based on existing requirements within the court system, which aids in promoting better results overall. As a result, the overall impact on the system's constitutional and human rights commitments is beneficial.

### **3.6 INTERNATIONAL PROVISIONS:**

International regulations concerning mob lynching in India have a significant influence on developing better ideas for managing and restricting them. These laws significantly direct the procurement process's aims. Both the government and the general populace in India are impacted by these international provisions and consequently function in compliance with them.<sup>74</sup> The characteristics essential for designing a quality-oriented legislative design to combat mob lynching. In most situations, international provisions function as a key pressure group for the preservation of the rights of minorities, who are the focus of these incidents. These laws contribute to the preservation of certain good results for the available groups that are a persistent target of lynching, so providing them with necessary safety and security concerns. International rules, for example, might have an impact on regulatory procedures within a country like India. The assessment component that is incorporated across an organisation is allowed to be the value and quality of the legislation management process. These are also useful in producing effective recommendations for policy creation and resource management in the domain of mob lynching in India.

The availability of international provisions is appropriate for reducing the obstacles and concerns that exist inside India's legislation in terms of preventing mob lynching incidents. The international provisions are designed to benefit a large number of people, and so the inclusion of qualities connected to it is important in constructing a better outlook associated with the overall quality of services. Many of the thoughts and characteristics that are likely to be applied across an efficient legal system are based on ideas from a diverse variety of

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<sup>73</sup>S. Gopinath, 'Appropriating Bodies: Discourses on Nationalism in India' (2017) 6(1), HyperCultura<Download citation of Appropriating Bodies: Discourses on Nationalism in India (researchgate.net)> accessed on 24 June 2023

<sup>74</sup>R. Mukherjee, 'Mobile witnessing on WhatsApp: Vigilante virality and the anatomy of mob lynching' (2020) South Asian Popular Culture 18(1), 79-101.

organisations. As a result, the final products of these procedures are allowed to contribute a proper quantity of design attribute to the legislative growth.

Recent incidents of mob lynching in India have been widely condemned by worldwide societies, and hence have been critical in advocating changes in its legal and social obligations. Considerations based on international provisions are also crucial since they encourage an ideal situation for each of the accessible domains that exist throughout the country's pressurising judicial systems.<sup>75</sup>

International provisions serve as a primary source of guidance for the available qualities, providing the legal structure with the necessary requirements for preventing and regulating mob lynching incidents. International provisions can also help to promote and achieve justice for survivors of mob lynching cases or their kin. Because the majority of mob lynching cases are carried out by autonomous vigilante groups that are either sponsored by the major social sections or the political parties in power, the present legal system is likewise ineffective. Thus, the presence of international provisions is beneficial in these instances. These rules create a persistent threat of widespread slander of the country. As a result, these play a significant role in increasing pressure across the incidence.

### **3.6.1 Human Rights Act**

The Universal Declaration of Human Rights (UDHR) is a declaration that serves as a worldwide road map for liberty and equality, defending the rights of all people everywhere. It was the first time countries agreed on the freedoms and rights that demand universal protection so that every human might live freely, equally, and in dignity. The Declaration outlines 30 rights and freedoms that belong to all of us and that nobody can take away from us. The rights that were included continue to form the basis for international human rights law. Today, the Declaration remains a living document. It is the most translated document in the world.<sup>76</sup> India is a signatory to the Universal Declaration of Human Rights. This component is in charge of adhering to the existing criteria in order to maintain adequate quality considerations throughout the human rights management process. All human rights are equally vital, and all governments must treat them fairly and equitably, on same footing and with equal priority. Regardless of their political, economic, or cultural systems, all states have a duty to promote and preserve all human rights for all people without discrimination.

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<sup>75</sup> J. Islam, 'Mob Lynching and the Failure of Our Legal System' (2019) SCLS Law Review 2(3).

<sup>76</sup> 'Universal Declaration of Human Rights' (Amnesty International) < <https://www.amnesty.org/en/what-we-do/universal-declaration-of-human-rights>> accessed 25 June 2023

So, whatever differences individuals make, there is one fundamental premise that underpins all of the rights enumerated in the UDHR: that all human beings have the same inalienable rights. This means that human rights are the same for every man, woman, and kid on the planet, regardless of their circumstances. The UDHR also demonstrates that human rights are inextricably linked and inseparable. The Declaration's 30 articles are all equally vital. Nobody has the authority to judge which are more significant than others. Taking away one right has an adverse effect on all other rights.<sup>77</sup>

In the case of mob lynching incidents, India is accountable for adhering to the relevant requirements and initiating a more supporting entity that is linked to the process of human rights management. The concerns for preserving these elements are likewise crucial, and they are more likely to have an influence on the expanding needs of the general population. The basics of human rights must be upheld throughout these commitments, and in the event of a breach, the government or the entire country can be held responsible by the relevant authorities.<sup>78</sup>

The right to a fair trial was specified in greater depth in the International Covenant on Civil and Political Rights (ICCPR) a few years after the UDHR was enacted. Articles 14 and 16 of the ICCPR defend the right to a fair trial, which is binding under international law for nations that have signed on to it.<sup>79</sup>

Article 14(1) defines the fundamental right to a fair trial, article 14(2) creates the presumption of innocence, and article 14(3) specifies a set of minimal fair trial rights in criminal trials. Article 14(5) creates a condemned person's right to have the conviction or punishment reviewed by a higher court, while article 14(7) prevents double jeopardy.<sup>80</sup>

Numerous regional and international human rights accords have specified the right to a fair trial. It is one of the most comprehensive human rights, and it is enshrined in more than one article in all international human rights accords.<sup>81</sup> The right to a fair trial is one of the most disputed human rights, with extensive case law produced on its interpretation.<sup>82</sup> Despite

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<sup>77</sup> Ibid.

<sup>78</sup> C. Arun, 'On WhatsApp, Rumours, Lynching cases, and the Indian Government' (2019) *Economic & Political Weekly* 54(6)

<sup>79</sup> Curtis Doebbler, *Introduction to International Human Rights Law* (2006) CD Publishing, 107

<sup>80</sup> Gudmundur Alfredsson and Asbjorn Eide, *The Universal Declaration of Human Rights: a common standard of achievement* (Martinus Nijhoff Publishers 1999) 225–226

<sup>81</sup> Curtis Doebbler, *Introduction to International Human Rights Law* (CD Publishing 2006) 107–108.

<sup>82</sup> Curtis Doebbler, *Introduction to International Human Rights Law* (CD Publishing 2006) 110.

differences in phrasing and arrangement of the numerous fair trial provisions, international human rights instruments essentially establish the right to a fair trial.<sup>83</sup>

The goal of the right is to guarantee that justice is administered properly. The right to a fair trial encompasses, at a minimum, the following fair trial rights in civil and criminal proceedings:

- the right to be heard by a tribunal that is competent, independent, and impartial
- the right to an open hearing
- the right to be heard in a fair amount of time
- the right to consult with counsel
- the right to interpret

States may limit or waive the right to a fair trial only under the situations stipulated in the human rights instruments.<sup>84</sup>

### **3.7 THE CURRENT REGIME'S ISSUES AND CHALLENGES**

The current regime in India is in a majority of ways based on weakening social values, increase on the usage of propagation of fake news and development of false religious sentiments by the government to the common population. The various proposals and changes that are entitled to bring quality across their respective assessment process are of great importance throughout the system.<sup>85</sup> To make adjustments within the procedure, the obligations for commencing a resourceful activity across this subject are necessary. Throughout the procedure, the duties and reasons across the social establishments must be employed clearly.<sup>86</sup> The gap between different religious groups and sections has expanded greatly in the contemporary scenario, resulting in an inefficient design and a less correlative approach between their activities.

There are many factors which leads to mob violence.

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<sup>83</sup> Gudmundur Alfredsson and Asbjorn Eide, *The Universal Declaration of Human Rights: a common standard of achievement* (Martinus Nijhoff Publishers 1999) 225.

<sup>84</sup> Curtis Doebbler, *Introduction to International Human Rights Law* (CD Publishing 2006) p. 108.

<sup>85</sup> Carol Adcock, 'Cow Protection and Minority Rights in India: Reassessing Religious Freedom' (2018) 49 *Asian Affairs* 340.

<sup>86</sup> Robin V. Joseph, 'Derailment of Religious Freedom: a Study Based on the Constitutions of Indonesia and India' (2018) 1 *International Journal of Interreligious and Intercultural Studies* 71.

Little public awareness and poor educational penetration allow for the easy propagation of fake news, resulting in mass devastation and unrest. In society, there is a lack of trust and significant divisions.

The high incidence of youth unemployment leaves millions of youngsters unemployed, and these young idle minds are frequently misinformed and deceived by numerous ideologies and propaganda.

There is ineffective law enforcement. Furthermore, minority laws are not well implemented to protect vulnerable groups, and law enforcement organisations fail to maintain public confidence.

There being no particular statistics on lynching, the mob has no face, which leads to excessive measures, resulting in a lack of responsibility and conviction.

Police officers have an important role in preserving people's lives and maintaining social peace, yet hate crime is on the rise due to poor investigation methods.

Nowadays, information, disinformation, and propaganda travel quickly and uncontrollably over social media platforms. Nowadays, social media platforms are exploited to preach hatred, and anonymity makes it impossible to identify the true perpetrator of fake news.

The political class is occasionally a part of it as well. For example, the political elite exploiting community cleavages for a restricted agenda.

Mob lynching is a type of hate crime that is becoming more common as a consequence of biases or prejudices among various classes, tribes, and faiths. Biases are based on a variety of identities, including caste, class, and religion.<sup>87</sup>

Mob lynching violates the notion of diversity and brotherhood and fosters a climate of distrust among the people, particularly the marginalised and disadvantaged. As a result, there is a loss of calm, harmony, and a fearful environment. It can also disrupt communal cohesion. Considering cow vigilantism is a perfect example of it. It may also harm tourism since foreigners would be afraid to visit India because of the widespread fear of mob lynching and loss of tranquillity. Mob lynching is a violation of the rule of law. It demonstrates the public's

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<sup>87</sup> 'Mob Lynching' (*Clear IAS*, 31 October 2022) < <https://www.clearias.com/mob-lynching> > accessed 25 June 2023

deteriorating trust in the country's judicial system and legal procedures. It is quite difficult to hold anyone responsible.<sup>88</sup>

1. Inequality in society: Social inequality is one of the primary causes that contribute to incidences such as mob lynching. Social disparity is a risky practise in a social setup that is prone to include a less optimal setting for developing beneficial traits while reducing mob lynching incidents. The most important factor related with mob lynching is a lack of social equality. It is accountable for instilling enmity in communities and causing disparities in their respective responsibilities. Thus, the removal of social disparity in general, as well as its legal importance, may be extremely beneficial in bringing about a more perfect framework and, as a result, might boost mitigation theories for mob lynching.<sup>89</sup>
2. Inadequate data and research: Within a year, the National criminal Records Bureau (NCRB) compiles and publishes statistics on criminal incidences in India. Although there is a separate category in the report for lynching instances, the NCRB does not collect or publish any statistics on them. These occurrences are classified as murder by the NCRB.<sup>90</sup> Legal qualities governed by insufficient facts and study are entitled to a less authentic design and hence are not optimal for producing needed results. Inadequate data and information access are also likely to foster a fundamentally missing worldview based on inequality. As a result, the judgements taken are insufficient and may lack fundamental importance.
3. Delayed justice: Policy changes and delayed justice are two concerns that have a direct influence on the judicial system established by legal systems.<sup>91</sup> It is also entitled to increase disbelief and among some groups, having a harmful influence on societal cohesion. People who are victims of adversity lose faith in justice and, as a result, disassociate from the chosen system. The best example of it can be referred to the Dokmoka incident in Karbi Anglong district of Assam. On June 8, 2018, two Guwahati boys, Abhijit Nath and Nilotpall Das, went on a nature path in the distant parts of Karbi Anglong's Dokmoka. Despite the two victims' continuous pleas for

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<sup>88</sup> Ibid.

<sup>89</sup>Gaurav Prakash, Rishi K. Verma, P. Vigneswarallavarasan, and Arpan Kumar Kar, 'Authenticating Fake News: An Empirical Study in India' in International Working Conference on Transfer and Diffusion of IT (Springer, Cham, 2019) 339-350.

<sup>90</sup>Navjot Buttar, '9 facts about lynching in India' (*The Borgen Project*) < <https://borgenproject.org/9-facts-about-lynching-in-india> > accessed 25 June 2023

<sup>91</sup> P. Vigneswarallavarasan and Arpan Kumar Kar, 'Authenticating Fake News: An Empirical Study in India' in ICT Unbounded, Social Impact of Bright ICT Adoption: IFIP WG 8.6 International Conference on Transfer and Diffusion of IT, TDIT 2019, Accra, Ghana, June 21–22, 2019, Proceedings, vol 558 (Springer, 2019) 339..

compassion, a superstitious group of people beat them to death. It was thought that the mob was duped by some phoney news of child kidnapping on social media, after which the gang misconstrued the news and mercilessly murdered the two Guwahati teenagers.

The families of Abhijit Nath and Nilotpal Das had been yearning for justice for five years.<sup>92</sup>

4. Conviction and a lack of answerability: The main benefit that the mob has is that if a lynching results in the death of the victim, the entire crowd cannot be held legally liable for the killing. Although the entire crowd may be held liable for the lynching, only one individual will face prosecution for the victim's death. Identification of the primary perpetrator is nearly impossible since it is dependent on ascertaining which blow landed on the victim and caused his/her death, as well as who within the mob landed the strike itself. As a result, the crowd develops a sense of safety to some extent; the punishment for physical torture is nevertheless less severe than that for killing.<sup>93</sup>
5. Impunity and a lack of necessary legislation: We, as citizens, anticipate a certain level of dread to exist inside every individual from legal bodies over what punishment they may suffer if they knowingly break the law. However, there is no particular legislation in our Constitution prohibiting mob lynching. Mob lynching is not a cognizable offence in and of itself, but the numerous activities that result from it are punishable under laws that recognise a broader spectrum of criminal behaviour, such as physical harassment and homicide. Due to a lack of explicit legislation, the perpetrators do not fear the system, especially when it is impossible to identify persons responsible for the offence.<sup>94</sup>
6. The Police Department's Negligence: In certain circumstances, there is also the possibility that the police department did not carry out its duties in accordance with the law. As a result, people end up enforcing the law on their own. These occurrences continue to occur as a result of the police's ineptitude or delay in apprehending and

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<sup>92</sup> '5 years of horrific Abhi-Neel incident; Justice yet to be served' (*NewsLive*) < <https://newslivetv.com/5-years-of-horrific-abhi-neel-incident-justice-yet-to-be-served> > accessed 25 June 2023

<sup>93</sup> 'Mob Lynching- Dark Reality of the Largest Democracy' (*Knowlaw*, 10 December 2020) < <https://knowlaw.in/index.php/2020/12/10/sociology-of-mob-lynching> > accessed 25 June 2023

<sup>94</sup> 'Mob Lynching- Dark Reality of the Largest Democracy' (*Knowlaw*, 10 December 2020) < <https://knowlaw.in/index.php/2020/12/10/sociology-of-mob-lynching> > accessed 25 June 2023

punishing accused perpetrators. This frustration with the police department's performance contributes to an increase in mob lynching cases.<sup>95</sup>

7. Manipulation of the Media and False News: We are surrounded by massive structures such as corporations and big vocations in the rat rush of everyday life. Aspirants begin scheming the demise of others in their drive to ascend to the top. Those with the power of powerful contacts or riches utilise media outlets to manipulate public opinion in their favour. The slanderous propaganda utilised in these plans can have a significant negative impact on people's thinking. They begin to see the beliefs expressed in these persuasion methods as the only and full truth. This generates a wave of anger directed against the victim of the slander. As a result of the deception, this might lead to mob lynching in some circumstances. Today's mass media and social media have taken on the task of passing court decisions without any power to do so. People are falsely accused of dishonouring an entire society by their words or behaviour in order to seek public attention. This will invariably breed social enmity and communalism. Messages on social media are shared recklessly, with little vetting of the facts they contain. The hatred aspect that all of these behaviours elicit has a high proclivity for a widespread criminal eruption.<sup>96</sup>
8. Political Agenda: Nowadays, we observe several cases when politics has become violent. When a certain individual's actions or words insult a specific political agenda, there are countless incidents of riots by followers or believers of the related agenda or ideology. This can sometimes result in the perpetrator being lynched to death. As a result, political motives might be argued to contribute to mob lynching instances.<sup>97</sup>
9. Honour Killings: Respect killing has no specific connotation. In any case, these respect killings are murders committed by family and individuals holding a place with the involved station on the judgement of KhapPanchayats or relatives of such folks who are acknowledged to have hastened dishonour or shame on the family name. The obvious dishonour is caused by an injured individual refusing to get into an organised marriage or having a relationship that is deemed inappropriate by the family or network. The obvious embarrassment is frequently the result of the preceding practises or the suspicion about such behaviour:
  - Dress in a way that the group finds unacceptable.

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<sup>95</sup> Ibid.

<sup>96</sup> 'Mob Lynching- Dark Reality of the Largest Democracy' (*Knowlaw*, 10 December 2020) <<https://knowlaw.in/index.php/2020/12/10/sociology-of-mob-lynching>> accessed 25 June 2023

<sup>97</sup> Ibid.



- Marriage by possessing decision (despite family or group wishes);
- Participating in some sexual demonstrations, including those with inverted or same-sex partners.

It has been a difficulty for all governments to address this horrible crime against couples who seek to marry against the preferences of the society. The Central Government has made several efforts to eliminate discrimination between different groups and castes and has run many schemes to encourage couples to marry with intercaste partners, for which it provides financial assistance and protection, but even so, it is frequently seen that couples are murdered in the name of prestige or so-called honour in society.

10. Legal loopholes in criminal codes: The IPC 1860 sections 323, 324, 326, 302, and 307 are unsuccessful in dealing with mob lynching. Section 323 of the IPC punishes individuals who inflict injury freely, but Section 324 punishes those who cause harm intentionally using dangerous weapons. Section 326 addresses grievous bodily harm, whereas Sections 307 and 302 address attempted murder and the murder sentence, respectively. It is far more difficult to place the onus of crime on individuals in mob lynching cases. An irate crowd has sought to accuse police, accusing them of custodial murder, after a severely injured victim was turned over to police and died shortly after arriving at the hospital. In mob occurrences, there are several faces and participation. Because the crowd has no face, determining the responsibility of all individuals is extremely difficult.
11. Cow Vigilantism: Cows are legally protected from slaughter or injury in India, according to law enforcement. Violence, on the other hand, arises when vigilantes seize control of laws, fuelled by mistrust, hatred, or political power. When law enforcement's remarks and actions allow them to continue their vigilantism and concomitant violence, a vigilante feels liberated. In the majority of situations involving cow vigilante violence, first responder police personnel operate based on their belief biases, manipulative hesitancy, and political influences. They frequently delay responding to incidents, are hesitant to name vigilantes as offenders, are hesitant to file FIR (first investigation reports) against vigilantes, are afraid of losing their jobs due to vigilante political patronage, and frequently file cases against victims of vigilante violence. Cow protectors have been given carte blanche by the police. Police

favouritism extends to victims' relatives by delaying investigations and intimidating them so that they remain silent rather than seeking justice.

## CHAPTER 4

### MOB LYNCHING AND ITS JUDICIAL APPROACH

The fundamental components of the state, which are essential for its proper functioning and maintenance of order, are commonly identified as the legislative branch, the executive branch, and the judicial branch. These three branches of government are designed to operate in a system of checks and balances, where each branch has its own distinct powers and responsibilities, and no single branch can dominate or abuse its authority over the others. The legislative branch is responsible for making laws, the executive branch is responsible for enforcing laws, and the judicial branch is responsible for interpreting laws and resolving disputes. Together, these three pillars of the state form the foundation. The tripartite division of power in India's constitutional framework is a fundamental feature of its governance structure. The three organs of the state, namely the Legislative, Executive, and Judiciary, are each endowed with distinct and specialised functions. The Legislative branch is tasked with the responsibility of enacting laws, while the Executive branch is charged with the implementation of these laws. The Judiciary, on the other hand, is entrusted with the crucial role of evaluating the efficacy of the laws and ensuring that they conform to the constitutional standards. This division of power is a cornerstone of India's democratic system, and it serves to safeguard the rights and interests of its citizens. The branch of government that is tasked with the responsibility of ensuring the maintenance of law and order is the judiciary. In the present document, the collective body of the system's judicial apparatus, encompassing courts, judges, magistrates, adjudicators, and auxiliary personnel, shall be referred to as "courts." The responsibility of ensuring the proper implementation of the law, resolving conflicts, and administering penalties to wrongdoers falls squarely on the shoulders of the judicial system. The legal system is a crucial element of our democratic society. The implementation of a stable, lawful, and well-governed society is a fundamental objective that ensures the proper functioning of a community. In its capacity as the custodian of the Constitution and the bedrock rights of individuals, the judiciary is entrusted by society to safeguard their liberties, while the government depends on the courts to construe the law. The constitutional provision of Article 50 serves to safeguard the autonomy of the court by creating a clear demarcation between it and the executive branch. This demarcation is crucial in that it allows the court to function without any undue influence from powerful entities or

any inclination towards particular factions. The efficacy of a court's decision-making authority is contingent upon its capacity to effectively dispense justice. It is a well-established legal principle that the court of appeals holds exclusive jurisdiction to overturn a lower court's ruling. This authority is vested in the court of appeals by virtue of its appellate function, which empowers it to review the decisions of lower courts and to correct any errors or abuses of discretion that may have occurred therein. As such, the court of appeals serves as the final arbiter of legal disputes, ensuring that justice is served and the rule of law is upheld.

#### **4.1 VIEWS OF THE SUPREME COURT ON MOB LYNCHING:**

In a recent ruling, the Supreme Court of India has mandated that both the Central and State Governments implement a stringent regulation aimed at curtailing the heinous act of mob lynching. Furthermore, the apex court has directed the authorities to adopt a proactive approach in preventing the dissemination of any information through online networking media platforms that may potentially incite a mob to engage in such barbaric acts. This judicial pronouncement is a significant step towards ensuring the safety and security of all citizens, and underscores the importance of upholding the rule of law in a democratic society. As per a recent directive from the Supreme Court, it has been mandated that the Indian Penal Code's Section 153A and other similar provisions be employed by law enforcement officials to initiate the process of filing a First Information Report (FIR) against any individual who indulges in such activities. The apex court of India has recently recommended the implementation of daily preliminary hearings in rapid track courts, as well as the imposition of the most severe penalties for individuals accused of participating in crowd lynching incidents, with the aim of expediting the preliminary process.

The directive has been issued to states to ensure that police officers who have deliberately abstained from initiating criminal proceedings against individuals implicated in criminal activities or have neglected to take cognizance of comparable incidents despite being previously apprised of them, are subjected to disciplinary measures.

The act of protesting, which is often characterised by a lack of respect and a tendency towards retaliation, warrants a closer examination in the context of Section 153 A. The Supreme Court's intervention in this matter is a fitting response to the issue at hand. In the event that there exists substantiated proof of the proliferation of an illicit assembly, it may become necessary to invoke a horde configuration. The consistent implementation of this approach in response to comparable occurrences will suffice in effectively managing such

incidents. In light of the current circumstances, it is evident that the aforementioned event or occurrence is not taking place. The inquiry at hand pertains to the justification for the need of a novel legislation in circumstances where the current legislation's prerequisites are not being satisfactorily executed. The act of passing legislation can be perceived as a seemingly inert action, devoid of any tangible impact or effect. The present discourse concerns the phenomenon of mob lynching cases in India, specifically in relation to the recent spate of attacks on individuals suspected of abducting youth and consuming beef. While it is commonly believed that such incidents have seen a marked increase in frequency, a closer examination reveals that the nature of these occurrences is in fact undergoing a transformation. Rather than a mere uptick in the number of mob lynching cases, what is being observed is a shift in the character of the transgression itself. Primarily, it is noteworthy to mention that there exists no explicit delineation of detestable infractions. The focal point of our current discussion pertains to Section 153 A, which warrants our attention. In lieu of promulgating novel statutes, the legislative body known as Parliament has elected to implement extant legal provisions. The potential for a modification to the Indian Penal Code (IPC) is a matter of concern, as evidenced by the unfortunate incidents in Bangalore and Assam, where individuals were erroneously accused of kidnapping due to the dissemination of a misleading WhatsApp message. It is conceivable that the Parliament may seek to establish a legal framework that criminalises the act of harbouring contempt or preconceived notions towards a particular network based solely on the content that is consumed. Such a development would have significant implications for the freedom of expression and the right to access information, and must be carefully evaluated in light of the constitutional guarantees enshrined in the Indian legal system. The present study proposes a modification of the Indian Penal Code (IPC) to incorporate the suggested categories of offences, thereby endowing the indictment with enhanced authority. The manifestation of malevolent transgressions can be observed across various fields of study and can take on a multitude of forms.

#### **4.2 Landmark Judgement by Supreme Court**

In *Tehseen S. Poonawala v. Union of India*<sup>98</sup>, The Supreme Court issued guidelines in this case as preventative, therapeutic, and remedial steps to stop India's growing lynching rate. The Supreme Court did not centre its decision in this case only on the acceptable bounds of hate crimes. To describe the problem, it employed a variety of terminology, such as centred

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<sup>98</sup> AIR 2018 SC 3354

on savagery, lynching, horde brutality, vigilantism, and detest wrongdoings. Undoubtedly, NCRB does collect data on mass massacres and often aroused crimes.

The Supreme Court's historic ruling represents a significant breakthrough in the reform and defence of human rights. The Supreme Court ruled that law enforcement authorities must oversee the appropriate application of the law and that no private person should be permitted to seize control of the law or act in a way that makes them the law. The petitioner requested that the court take immediate and necessary action against the self-declared cow vigilante groups that were engaging in violence and mob lynching in the name of cow protection, according to suggestions made by the learned Senior Counsel Sanjay R. Hedge. The court took note of Sanjay R. Hedge's argument that no one or vigilante group can engage in violent behaviour based on the perception that a crime has been committed; any lynching or mob violence must be restrained and prevented by the Central Government. After hearing all of the arguments, the Supreme Court developed certain rules to stop the increasing number of mob lynching instances. The recommendations were divided into three groups: preventative, corrective, and punitive actions. It was thought that remedial and punitive measures would control crimes after preventative efforts were ineffective.

Measures suggested by the Apex Court:

Preventive measures:

- In each district, the state governments will appoint a senior police officer, with a rank no lower than that of Superintendent of Police, to serve as a nodal officer. A designated officer at the DSP level within the district will collaborate with the nodal officer to implement strategies aimed at mitigating incidents of lynching cases and other forms of mob violence. A dedicated task force will be established with the purpose of collecting intelligence reports pertaining to individuals who exhibit a propensity for engaging in violent acts, as well as those who disseminate hate speech, inflammatory remarks, and misleading information.
- The state governments will identify the districts, subdivisions, and towns where recent reports of mob lynching cases have been made.
- If any incidence of mob lynching within their jurisdiction is brought to their attention, it will be the responsibility of the nodal officer to ensure that the officer-in-charge of the police station of the specified regions is always a bit extra careful.

- The nodal officer was required to hold regular meetings in order to spot potential mob lynching cases and take the appropriate action to limit the propagation of violent content on various social media platforms.
- When dealing with mob lynching incidents and situations where they believe a similar crime may be committed in their presence, police personnel should exercise their authority under Section 129 of the Criminal Procedure Code (CrPC).
- The federal and state governments should issue a warning that lynching and mob violence will result in significant legal consequences on media platforms, TV, and radio, and the official websites of law enforcement authorities.
- The federal and state governments should take action to limit and halt the spread of violent posts on social media sites that have a propensity to incite lynching cases of all types and mob violence.
- Police are required to file a police report (FIR) under Section 153A of the IPC and/or other applicable laws against those who post abusive messages on social media platforms that have the potential to incite lynching cases and other types of gang violence.
- The central government's advisory, which will outline the gravity of the situation and the steps that the state government must take, will serve as the state government's guide.

#### Remedial Measures:

- The local police station should file a FIR without delay if any mob lynching cases come to their attention.
- The Nodal Officer in the district must be informed about the FIR by the police station where it was filed.
- In these situations, the nodal officer must personally oversee the inquiry to guarantee a thorough investigation and the timely filing of the charge sheet.
- To assist the victims' families, the state government must create a compensation plan in accordance with Section 357A of the Criminal Procedure Code.
- Fast track courts should be established to ensure that lynching and mob violence cases are tried quickly.

- To create strict precedents in incidents of lynching and mob violence, the trial courts should give the convicted person the maximum punishment.
- For the security of the witness, steps must be taken to keep the witness's name and address secret.
- According to the Legal Services Authorities Act of 1987, free legal assistance must be provided to the victim or the deceased victim's next of kin.

#### Punitive Measures

- If a police officer or a district administration officer is found to have disregarded the court's orders to put an end to a lynching or other act of mob violence, conduct an investigation, or facilitate a speedy trial, it will be recognised as intentional negligence and misconduct.
- The government must penalise such intentional carelessness and malfeasance, and a departmental investigation into the offender must be opened.

If it is determined that the officer failed to intervene to avert a lynching or act of mob violence while being aware that such an occurrence was going to occur, the state government shall take action against the police if the policeman did not immediately make an arrest and initiate legal action against those responsible for the assault.

The Supreme Court also provided extensive guidelines to restrict damage by combative audiences in *Kodungallur Film Society v. Union of India*.<sup>99</sup> The present study concerns the Public Interest Litigation (PIL) that was documented by the Kodungallur Film Society. The PIL aimed to establish a comprehensive regulatory framework to curb the occurrence of widespread incidents of violence and hooliganism perpetrated by fundamentalist factions and peripheral elements with the intention of engaging in confrontational activities. The present discourse concerns the PIL, which has been expounded in connection with the unbridled destruction perpetrated by members of the KarniSena during the period of unrest surrounding the film "Padmavat". The primary requisition of the Public Interest Litigation (PIL) was for the expeditious adherence of the Central and State governments to the regulations that were established by the Court in the aforementioned verdict.

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<sup>99</sup>Writ Petition(s)(Civil) No(s).330/201



In the case of National Legal Services Authority v. UOI,<sup>100</sup> The Honourable Supreme Court of India has unequivocally stated that the sustenance of Indian democracy is contingent upon various other factors, one of which is the establishment and maintenance of the rule of law.

Additionally, the Supreme Court reiterated in S. Krishna Sradha v. State of A.P.<sup>101</sup> The proposition that adherence to legal procedure in the dispensation of justice is the sole means by which authentic justice can be achieved is a notion that has been widely espoused. The fundamental premise underlying this assertion is that the legal system is designed to ensure that justice is served in a fair and impartial manner. As such, any deviation from the established legal procedures could potentially compromise the integrity of the justice system and lead to outcomes that are unjust or inequitable. Therefore, it is imperative that legal practitioners and other stakeholders in the justice system remain committed to upholding the established legal procedures.

In National Human Rights Commission v. State of Gujarat,<sup>102</sup> this court compared those people to terrorists, who take law in their hands under the garb of religion. In Mohd. Haroon and others v. UOI<sup>103</sup> and another, the SC ruled that in order to avoid acts of sectarian violence, each state government must work in concert with the state and central intelligence services.

The Supreme Court emphasised that every state's police infrastructure had to be enhanced to combat communal violence in Archbishop Raphael Cheenath S.V.D. v. State of Orissa and others.<sup>104</sup>

### **4.3 Writ Jurisdiction**

The Indian Constitution, a seminal legal document, enshrines a plethora of fundamental rights that are deemed indispensable to the existence and well-being of every individual. Specifically, Articles 12-35 of the Constitution enumerate a range of such rights that are deemed sacrosanct and inviolable. These rights, which are applicable to all persons without discrimination, are considered to be the bedrock of a just and equitable society. The preservation of fundamental rights is a crucial aspect of any society that values individual liberties and democratic principles. While the provision of such rights is undoubtedly

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<sup>100</sup>(2014) 5 SCC 438.

<sup>101</sup> (2017) 4 SCC 516

<sup>102</sup>(2009) 6 SCC 342.

<sup>103</sup>(2014) 1 SCC 701.

<sup>104</sup> (2009) 17 SCC 86

important, it is not sufficient in and of itself. Rather, it is imperative that these rights be safeguarded and protected from any potential threats or encroachments that may arise. This requires a concerted effort on the part of both the government and the Indian Constitution, in its Articles 32 and 226, has provided a mechanism for the safeguarding of fundamental rights. These provisions empower the Supreme Court and the High Court, respectively, to issue writs in cases where the basic rights of a citizen have been infringed upon. This remedy serves as a crucial means of upholding the sanctity of fundamental rights enshrined in the Indian Constitution. The term “prerogative writs” is commonly employed to refer to the writs that are issued in India. The Supreme Court, in its capacity as a guardian of fundamental rights, bears the responsibility of ensuring their protection. The institution in question is commonly regarded as the safeguard and champion of the fundamental rights of the populace of India. The court in question possesses the authority to issue a variety of writs, including but not limited to habeas corpus, mandamus, quo warranto, certiorari, and prohibition. The present discourse concerns the legal concept of writs, which are instruments of directive nature emanating from a superior authority, such as the Supreme Court or the High Court. These writs are designed to mandate or prohibit a person from engaging in a specific course of action. In instances where the state transgresses upon an individual’s fundamental rights, it is within the purview of any person to file a writ petition.

1. Writ of Habeas Corpus: The legal term “Habeas corpus” is commonly known in its extended version as “Habeas corpus (coram nobis) ad subjiciendum.” This Latin phrase translates to “you must have the body before us for submitting.” The present document serves as a legal instrument aimed at securing the liberation of an individual who has been subjected to an unjust deprivation of liberty. The present document serves to establish that any individual who is apprehended by law enforcement officials, the judiciary, or a non-governmental entity is to be presented before a court of law, and subsequently released in the event that their confinement is deemed to be in violation of the law. The onus of furnishing evidence lies with the entity, be it a public body or a private individual, that has assumed the responsibility of detaining an individual. The writ petition may be initiated by the detained individual either in a personal capacity or on behalf of acquaintances or relatives. The issuance of the writ is a legal mechanism that can be invoked against entities, whether governmental or private in nature. The contemporary state of affairs, characterised by a surge in occurrences of mob violence on a daily basis and the looming prospect of

unwarranted or unlawful detention, serves to underscore the continued pertinence of this writ.

2. **Writ of Mandamus:** The writ of mandamus is issued by a higher court to compel a public official, lower court, or government agency to perform a specific duty that they are legally obligated to fulfill. This writ is used when there is a clear right to the performance of the duty, and no other adequate legal remedy is available. It aims to ensure that public officials or institutions carry out their responsibilities in a precise and accurate manner.
3. **Writ of Quo Warranto:** The writ of quo warranto is used to challenge the legal authority or validity of a person holding a public office or position. It is issued to inquire into the right or qualifications of an individual to hold a specific office. This writ requires the holder of the office to demonstrate that they have the legal right or qualifications to occupy the position. If the court determines that the person does not meet the necessary requirements, they may be removed from the office.
4. **Writ of Certiorari:** The writ of certiorari is commonly used to review and correct errors made by lower courts or tribunals. It is issued by a higher court to review the decision of a lower court and determine whether the law has been correctly applied. The higher court examines the legal issues involved in the case and decides whether to uphold, modify, or reverse the decision of the lower court. The writ of certiorari ensures consistency and uniformity in the interpretation of the law.
5. **Writ of Prohibition:** The writ of prohibition is employed to prevent a lower court or tribunal from exceeding its jurisdiction or acting beyond its lawful authority. It is issued by a higher court to prohibit the lower court from proceeding with a particular case or taking specific actions. This writ is used when there is a clear violation of the law or when it is necessary to prevent an injustice or an abuse of power by the lower court.

### **Public Interest Litigation (PIL)**

The absence of a definitive explanation of the acronym PIL, or Public Interest Litigation, within the corpus of Indian legislative enactments is a notable observation. The concept of the Public Interest Litigation (PIL) has indeed been interpreted and elucidated by various judicial bodies. In the seminal case of *Janata Dal v. H.S. Chaudhary*, as reported in AIR 1993 SC 892, the esteemed Supreme Court of India rendered a significant judgement that delved into the lexical interpretation of the term “PIL,” which stands for Public Interest Litigation.

The Court expounded that PIL, in its essence, pertains to a legal recourse instigated within the precincts of a court of law, with the primary objective of safeguarding and advancing the interests of the public at large or a specific segment thereof. These interests may encompass a wide spectrum, including but not limited to financial considerations, which have the potential to impact the legal rights and obligations of the concerned individuals or groups. In light of their manifold advantages, including expeditious outcomes, economical litigation expenses, lenient procedural regulations, and the extensive array of investigative methodologies at the disposal of courts, such as the establishment of specialised committees, Public Interest Litigations (PILs) are widely regarded as the preeminent and frequently employed judicial instrument for safeguarding the environment.

The emergence of mob violence in the Indian context was initially brought to the attention of the esteemed Supreme Court through a Public Interest Litigation (PIL) in *Tehseen S. Poonawalla V. Union of India and Others* case. In this significant legal proceeding, the highest judicial body in the nation demonstrated a favourable disposition towards addressing this pressing issue. In the present case, it is noteworthy to acknowledge the substantial role played by Public Interest Litigations (PILs).

#### **4.4 SUPREME COURT RULES ON RIGHT TO LIFE**

The Supreme Court of India, widely regarded as the vanguard of constitutional protection and the safeguard of fundamental rights, assumes the dual role of the apex judicial authority in the nation and the champion of the rights of the ordinary citizenry. In fulfilling its constitutional mandate, the highest judicial body of the nation is duty-bound to employ all requisite measures to safeguard the fundamental rights enshrined within the Constitution. This solemn obligation has consistently been upheld by the esteemed members of the Honourable Court, who have demonstrated unwavering fidelity in their pursuit of this noble objective. The contemporary societal landscape is fraught with a burgeoning prevalence of mob violence, thereby posing a grave threat to the fundamental right to life. However, it is the esteemed court that has assumed the mantle of safeguarding this sacrosanct right, shouldering the weighty burden of discharging its duties with unwavering integrity and unimpeachable accountability.

**Right to Life and Personal Liberty:** The constitutional framework of India bestows upon the state legislatures and the Parliament of India the authority to promulgate legislation within their respective jurisdictions. The power in question is not without its inherent

limitations. In accordance with the provisions set forth in the Constitution, the esteemed court is bestowed with the solemn responsibility and jurisdiction to adjudicate upon the constitutionality of every law. The Supreme Court, as the highest judicial authority in the land, possesses the formidable power to render a verdict on the legality or potential detriment of a given statute, should it transgress any provision enshrined within the sacred document that is the Constitution. This includes, but is not limited to, the esteemed Part III of the Constitution, which safeguards the fundamental rights of citizens. It is pertinent to note that the impugned legislation in question must have undergone the requisite scrutiny and approval processes within the hallowed halls of Parliament or the respective state legislatures. In accordance with the intentions of the esteemed founding fathers, it is evident that their primary objective in formulating the Constitution was to establish a governing structure that possessed a remarkable degree of adaptability and malleability, as opposed to one that was characterised by inflexibility and rigidity.

The present analysis delves into the subject matter of the Indian Supreme Court's judicial activism and its consequential application of Article 21 of the Indian Constitution. This examination aims to elucidate the underlying motivations that drive judicial innovation and concurrently substantiate the pivotal role played by the Supreme Court in safeguarding the fundamental rights of individuals, particularly in instances where the legislative and executive branches have proven inadequate in fulfilling this responsibility. The phenomenon of judicial activity can be attributed, in part, to the failure of other institutions within the state to effectively discharge their respective duties. The pursuit of knowledge and scholarly endeavours holds immense significance, as it is intrinsically linked to the preservation and safeguarding of the fundamental human rights pertaining to life and personal liberty. These rights, widely regarded as paramount and revered, serve as the bedrock upon which numerous other individual rights revolve. The examination of the right to life delves into the role of the Supreme Court as a staunch protector of fundamental human rights. Chapter III of the Indian Constitution, a pivotal segment therein, expounds upon the sacrosanct realm of Fundamental Rights, a corpus of entitlements that are bestowed upon the citizens and residents of the nation-state, and are duly protected and upheld by the legal framework. In the event that an individual's private actions transgress the boundaries of personal liberty or result in the deprivation of another individual's life, it is imperative to acknowledge that such transgressions do not fall within the purview of the limitations stipulated in Article 21.

The potential recourse available to the party who feels wronged in this particular instance would be granted in accordance with the overarching principles of the law, specifically as outlined in either Article 32 or Article 226 of the constitution. The aforementioned conduct is likely to fall within the purview of Article 21 of the Constitution, which safeguards the right to life of an individual. However, it is important to note that this protection extends to situations where the actions of a private individual, when aided or abetted by the state, pose a threat to the personal liberty or life of another individual. Within the realm of legal and socio political discourse, it is imperative to delve into the multifaceted nature of individuals, as they navigate the intricate web of societal categorizations. One such categorization that warrants meticulous examination is the dichotomy between citizens and noncitizens, which serves as a fundamental framework for understanding the legal and social standing of individuals within a given jurisdiction.

**Meaning of Right to Life:** Every individual possesses the inherent right to lead their own lives, exercise their freedom, and enjoy personal security. Undoubtedly, the right to life holds paramount significance among all other rights. The functionality and contribution to the quality of life of all other rights are contingent upon the presence of life. Human rights are intrinsically linked to the preservation of life, as the right to life is generally considered fundamental for all beings. Without the right to life, the significance of other rights would be rendered void. Had Article 21 been interpreted within its original contextual framework, the existence of noteworthy Fundamental Rights would have been rendered null. As per the American Declaration of Independence (1776), it is asserted that certain truths are inherently evident, namely the equality of all individuals at the time of their creation, and the bestowal of specific rights by their Creator that cannot be taken away, including the rights to life, liberty, and the pursuit of happiness. In the case of *Munn v. State of Illinois*,<sup>105</sup> the United States Supreme Court referenced Justice Field's assertion that the term "life," as employed in this context, encompasses more than mere elemental animal existence. Consequently, it encompasses both the tangible aspect of existence and the subjective assessment of one's well-being. This marked the inaugural instance in which a legal case was raised pertaining to the interpretation of the concept of "life".

**Right to Life and Personal Liberty Concept:** The Supreme Court's customary method, without first comprehending the conventional position, it is hard to comprehend the current situation of the right to life. According to Article 21, no one's life or freedom may be taken

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<sup>105</sup> 94 U.S. 113 (1876)

away from them unless they adhere to the legal procedure. The Preventive Detection Act, 1950's legality was contested in *A.K. Gopalan v. State of Madras*<sup>106</sup> case the Supreme Court of India first questioned and interpreted this legal method. The main debate concerned whether Art. 21 permitted any method authorised by the government or if the system had to be just and reasonable. The petitioner aimed to convince the Supreme Court that the courts had the power to decide whether the Preventive Detection Act of 1950 or any other piece of law restricting an individual's personal freedom was acceptable.

The Supreme Court separated Article 19 from Articles 21 and 22. This perspective of view led to an unexpected conclusion at the time. This stance was reflected in the *Ram Singh v. Delhi Administration*<sup>107</sup> case. In cases where an individual was apprehended under the Preventive Detention Act for uttering words that were deemed detrimental to the preservation of public order, the court abstained from adjudicating on the constitutionality of the detention order in accordance with Article 19(1)(a) in conjunction with Article 19(2). The court's rationale was that, despite the curtailment of the right guaranteed by Article 19(1)(a), the said right was not subject to limitations as per the *A. K. Gopalan* ruling. Though over time, this firm stance relaxed, and *R.C. Cooper V. Union of India* marked the start of a new trend.<sup>108</sup> Generally referred to the case of *Bank Nationalisation*, the SC applied Article 19(1) (f) to assess the validity of a bill passed under Article 31(2). These two things were formerly believed to be incompatible with one another. The Supreme Court's view that fundamental rights are incompatible with one another was significantly impacted by this case. *Sambhu Nath Sarkar v. State of West Bengal*<sup>109</sup>, where the Court took notice of the *Bank Nationalisation* case and held that the majority of the *A.K. Gopalan* case was incorrect, nullifying the Court's previous ruling in *Gopalan*, demonstrated that the Supreme Court recognised the strength of this argument.

**4.5 The Many facets of Personal Liberty:** The *Maneka Gandhi v. Union of India*<sup>110</sup> case is a pivotal one in the post-emergency era. The Supreme Court's interpretation of Article 21 of the United Nations Charter is an example of how liberal trends have affected its interpretation in this instance. The legal approach to the preservation of personal liberty experienced a substantial adjustment in the wake of the terrible events of the emergency in 1975–1977,

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<sup>106</sup>1950 AIR 27, 1950 SCR 88

<sup>107</sup>1962 AIR 63, 1962 SCR (2) 694

<sup>108</sup>AIR 1970 SC 564

<sup>109</sup>1973 AIR 1425, 1974 SCR (1) 1

<sup>110</sup>AIR 1978 SC

where individual liberty was at its weakest point. The SC's ruling in *A.D.M. Jabalpur V. Shiva Kant Shukla*<sup>111</sup> labelled this period as the worst in Indian constitutional history. The case, sometimes referred to as the Habeas Corpus Case, has drawn strong criticism from academics in India. This case exemplified the interpretation of *A K Gopalan*, which posited that Article 21 did not offer any safeguard against stringent legislation aimed at depriving individuals of their life or personal liberty. It became apparent following the emergency that the government apparatus had misused its authority to impose preventative detention during the emergency and that action needed to be taken to avoid a repeat of the situation. In order to reverse some of the 42nd (Indira Constitution) Amendments, the 44th Amendment to the Constitution was passed. As a result, Articles 20 and 21 would never be suspended, even in times of emergency, and other fundamental rights would not be automatically suspended. A specific presidential order is necessary. The court's perspective on Article 21 has changed as a result of this case.

The right to life takes precedence over all other common rights; it is a sacred right, and no occurrence involving a crowd or other group has the power to restrict it. The Supreme Court is anxious to uphold this right and has taken various proactive steps in this direction. The Apex Court has demonstrated in several judgements that this right's breach is inviolable at all costs.

**4.5.1 Right to Livelihood:** The right to a livelihood is guaranteed to both mob violence victims and criminals once they have served their sentences, and it cannot under any circumstances be infringed. Firstly, the SC thought that the right to life which is guaranteed by Article 21 did not include the right to subsistence. Prior to the *Maneka Gandhi* case, in *Re - Sant Ram*<sup>112</sup>, the SC ruled that the right to subsistence did not come under the concept of life in Article 21. The Supreme Court, on the other hand, later had a change of heart. The Court determined that the right to livelihood falls under right to life which is protected by Article 21 since the term "life" is defined in such a broad and comprehensive way. Because no one can survive without the means of sustenance, or the means of livelihood, the Supreme Court reasoned in *Olga Tellis V. Bombay Municipal Corporation*<sup>113</sup> that the right to livelihood falls under right to life.

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<sup>111</sup> AIR 1976 SC 1207

<sup>112</sup> AIR 1960 SC 932, 1960 3 SCR 499

<sup>113</sup> AIR 1986 SC 180



**4.5.2 Right to Medical Care:** In the decision of *Parmananda Katara v. Union of India*<sup>114</sup>, the SC has broadened the application and legal framework of emergency medical services in India. In a significant ruling, the Supreme Court mandated that any physician or hospital, public or private, must offer emergency care to a victim of a traffic accident. of India.

Take the patient to the Govt. hospital; stop making flimsy justifications like it looks to be a medical-legal case. This verdict is seen to be one of PIL's top results or accomplishments.

**4.5.3 Right to free legal aid:** Another essential right is the ability to acquire legal representation; without it, it is impossible to get justice or establish one's innocence. In mob lynching instances, there may be situations when the victim's instant innocence cannot be established and he needs competent legal representation to defend himself against the false accusations. In *Madhav Hayawandan Rao Haskot V. State of Maharashtra*<sup>115</sup>, according to the SC's decision, individuals who lack the financial means to secure legal representation are entitled to receive state-funded legal aid. In *Hussainara Khatoon v. State of Bihar*<sup>116</sup>, the SC ruled that it is imperative to recognise that the fundamental rights of prisoners, specifically their right to life and liberty as enshrined in Article 21, must not be violated through the act of prolonging their incarceration beyond the duration stipulated by the court's sentencing..

**4.5.4 Right to Speedy Trial:** Article 21 of the Constitution's protection of life and personal liberty states that everyone has the right to a speedy trial. If this right is violated, the accused may bring a lawsuit to have the legislation changed. The SC ruled in *Hussainara Khatoon v. Home Secretary, State of Bihar* that right to a speedy trial is an essential freedom guaranteed by Article 21 of the Constitution. Any defendant who is declined this right may petition the SC under Article 32 to have the right to a speedy trial upheld, and the Supreme Court has the power to issue the State with the necessary instructions to carry out this right.

**4.5.5 Right to claim Compensation:** The perpetrator of an act receives punishment for his wrongdoing, but what about the victim and his family members who suffer greatly following the loss of their breadwinner? Today, victims of mob violence confront similar challenges and must be given appropriate solutions. The Indian Supreme Court has also demonstrated its

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<sup>114</sup>1989 AIR 2039, 1989 SCR (3) 997

<sup>115</sup>1978 AIR 1548, 1979 SCR (1) 192

<sup>116</sup> 1979 AIR 1369, 1979 SCR (3) 532

active and forward-thinking participation in compensating jurisprudence. *Nilabati Behera v. State of Orissa*,<sup>117</sup>

Prior to this, the SC ordered the respondent, the State of Orissa, to pay the petitioner Rs. 1,50,000 plus Rs. 10,000 to the SC Legal Aid Committee in *Katri V. State of Bihar*<sup>118</sup> for the first instance. According to Article 21 of the Constitution, the SC determined that the right to compensation qualifies as a basic right.

**4.6 Judicial Review:** When the executive, the judiciary, and legislature undermine constitutional ideals and deny rights, judicial review is a crucial safeguard. In the nation, the judiciary is seen as a necessary component. In India, there is a parliamentary type of democracy in which all demographic groups participate in the formulation of decisions and public policy. It is true that the foundation for social equality is the court's primary responsibility to uphold the law. The rule of law that is to be upheld by the courts cannot be altered by the use of additional powers granted by Parliament. Everyone in this room who is doing a civic obligation is responsible. They are required to operate within the bounds of the Indian Constitution's democratic requirements. Judicial review is the idea of the separation of powers and the rule of law. In the case of the High Court, Articles 226 and 227 of the Indian Constitution, and for the review, Articles 32 and 136, the effect of judicial evaluation has been in place for a very long time. Mob violence was initially brought to the Supreme Court of India's notice through a PIL in *Tehseen S. Poonawalla V. Union of India and others*, and the Apex Court viewed it favourably. As a result, PILs also played a significant part in this subject.

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<sup>117</sup> AIR 1993 SC 1960

<sup>118</sup> AIR 1981 SC

## CHAPTER 5

### CONCLUSION AND SUGGESTIONS

#### 5.1 Conclusion

In light of the inherent value of life, it is incumbent upon the contemporary state to assume the responsibility of ensuring the protection and preservation of the lives of its citizenry. In accordance with the provisions set forth in Article 21 of the Indian Constitution, the state is bestowed with the solemn responsibility of safeguarding the lives of a multitude of individuals. In light of the escalating frequency of mob lynching incidents and other acts of violence, the efficacy of the law is being subjected to rigorous examination. In order to ensure the ascendancy of the majority in the governance of the nation, it is imperative that a thorough investigation be conducted into these transgressions. The present investigation has engendered a discernible inference that the enactment of novel legislation is imperative to effectively confront the issue of mass lynching and slaughter, thereby mitigating the escalating trend of human carnage. In analysing the insufficiency of the nation's customary law in effectively addressing violations of a certain nature, it becomes evident that there exists a notable gap in the legal framework. This discrepancy arises from the inherent limitations of customary law in adequately responding to contemporary transgressions. It is imperative to critically examine the shortcomings of the nation's customary legal system. In the realm of societal transgressions, few manifestations of violence elicit as much consternation, repulsion, and moral indignation as the abhorrent practises of mob lynching and brutality. These egregious acts, characterised by their unyielding cruelty, lack of empathy, and pervasive corruption, represent a dark underbelly of human behaviour that challenges the very foundations of justice, compassion, and civility.

The phenomenon of lynching is an established and acknowledged practise within society, which is contingent upon prevailing societal behaviours. In contemporary society, it is imperative to acknowledge and address the issue of inclusivity and the eradication of discriminatory practises based on religion, caste, race, belief systems, or any other form of group categorization. The notion that there should be no space for such divisions is a fundamental tenet in the pursuit of a just and equitable society. By advocating for the elimination of these divisive constructs, individuals and communities can foster an

environment that promotes unity, understanding, and respect for all individuals. In the realm of lynching, it is imperative to recognise that no single cause can be deemed more significant than its counterparts. The multifaceted nature of this abhorrent practise necessitates a comprehensive understanding of the various factors that contribute to its occurrence. By acknowledging the intricate interplay between these causes, one can gain a more nuanced comprehension of the complex dynamics that underpin lynching incidents. The imperative to impose penalties upon individuals who engage in behaviour that incites violence is a matter of utmost importance. The phenomenon of mob justice serves as a conspicuous indicator of the state's inability to fulfil its obligation of effectively dispensing justice, a fact that has been demonstrated time and again throughout history. The act of mob lynching is unequivocally an affront to the inherent worth and value of human beings, constituting a grave transgression against the principles enshrined within the international human rights covenant. Furthermore, it represents a clear violation of Article 21, which forms an integral part of the fundamental tenets that underpin the Constitution.

In its ruling in *Tahseen S. Poonawala V. UOI* (WP(C) No.754/2016), the Supreme Court outlined many preventive, remedial, and corrective methods to cope with lynching and mob abuse.

The imperative for states to establish distinct expeditious adjudicatory bodies dedicated to the resolution of mob lynching cases within every district has been underscored. In response to the pressing issue of hate speech, inciting statements, and misleading material that have the potential to instigate mob lynching, the court has put forth a recommendation for the establishment of a specialised task force. This task force would be entrusted with the crucial responsibility of collecting and analysing intelligence data pertaining to individuals who engage in the dissemination of such harmful content. By undertaking this proactive measure, the court aims to mitigate the risks associated with mob violence and uphold the principles of justice and social harmony. The guidelines also called for the creation of victim compensation programmes for the rehabilitation of victims. The Supreme Court sent notices to the Centre and various states in July 2019 asking them to implement the measures and file compliance reports.

The imperative is hereby articulated for the establishment of unambiguous legislative measures aimed at effectively redressing instances of honour killings, hate crimes, witch hunts, and mob lynching cases, regardless of their geographical occurrence. In light of the

aforementioned offences, it is worth noting that the common thread among them is the act of murder. Consequently, it is plausible to assert that these offences can be effectively addressed within the existing legal framework of the Indian Penal Code (IPC) and the Code of Criminal Procedure (CrPC). The Poonawala case has played a pivotal role in equipping our society with the necessary tools to effectively address the issue of mob lynching. In light of the prevailing circumstances, it is imperative to underscore the necessity for the establishment of transparent enforcement agencies and the efficient implementation of extant legislation. The crux of the matter lies in the recognition that these measures are indispensable for the attainment of a just and equitable society.

Mob violence has tainted our legal system. It comes from the illogical idea of vigilantism that fuels the disease. Such excrescence must be restrained with a firm hand. The law is the most potent authority in a nation ruled by humans. The dignity of justice cannot be compromised simply because a person or a party believes that the legal requirements have allowed them to implement them on their own, become a law unto themselves, and punish infringers in accordance with their judgement and in the way they see fit. Sivakumar, Krishnamoorthy, and others<sup>119</sup>. Every democratic society has to adhere to the law for it to thrive.

The paramount significance of freedom of speech within a democratic society cannot be overstated. The aforementioned phenomenon facilitates the active engagement of individuals in the various social, legal, and political occurrences transpiring within the confines of their nation-state. The concept of freedom, as it pertains to the fundamental rights of individuals, encompasses an indispensable element that is crucial for their sustenance and progress within the societal framework.

The confluence of political, social, and legal objectives has long served as a catalyst for individuals to unite in a collective endeavour, employing the potent tool of free speech. This fundamental right, enshrined in the fabric of democratic societies, has emerged as a formidable means through which people can galvanise their efforts, foster solidarity, and effectuate change. In this discourse, we shall explore the multifaceted dimensions of this phenomenon, delving into the intricate interplay between the exercise of free speech and The engagement in sound debates serves a dual purpose, as it not only imparts knowledge and enlightenment to the general public, but also offers a viable solution to an urgent and compelling issue. The aforementioned freedom, which serves as the bedrock of a society

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<sup>119</sup> (2015) 3 SCC 467)

characterised by liberty, engenders a plethora of additional entitlements, encompassing the right to access information, the freedom to express oneself, and the prerogative to disseminate or publish personal viewpoints. In contrast, it is imperative to acknowledge that this phenomenon also engenders a plethora of adverse consequences, encompassing but not limited to the dissemination of defamatory content, the provocation of animosity, and the propagation of hate speech. In light of the aforementioned circumstances, it is noteworthy to observe that the framers of the Constitution, cognizant of the paramount importance of the freedom of speech and expression, deliberately refrained from endowing it with an absolute character. Within the framework of the Indian Constitution, Article 19(2) delineates a set of limitations pertaining to the expression of ideas, opinions, and information. These restrictions are imposed when such expressions pose a threat to the security, sovereignty, and integrity of the state, impede the cultivation of amicable relations with foreign nations, disrupt public order, undermine societal decency and morality, or engender contempt of court, libel, or incitement to criminal activities. It is within these parameters that the boundaries of permissible discourse are established, safeguarding the aforementioned aspects of paramount importance to the Indian nation-state. In light of the aforementioned circumstances, it is imperative to acknowledge that the prohibition against uttering statements that may potentially engender difficulties or complications for both individuals and society at large extends beyond the realm of legal statutes. Indeed, our ethical framework and deeply ingrained principles serve as additional deterrents against engaging in discourse that could prove detrimental to ourselves and others. However, it must be noted that the constraints imposed by societal norms and regulations have consistently failed to govern human behaviour in a manner that aligns with their intended purpose.

## **5.2 JUDICIAL & LEGAL ACTIONS TO REDUCE HATE SPEECH & MOB LYNCHING**

Mob lynching cases are unusual crimes. The Supreme Court of India said, “Citizens cannot take the law into their own hands or become a law unto themselves,” adding that “horrendous actions of mobocracy” cannot become the new norm. Therefore, it is vitally necessary to enact a specific legislation to prevent the danger of mob lynching. In instances of mob lynching targeting scheduled castes and scheduled tribes, the SC/ST (Prevention of Atrocities) Act 1989 has shown to be an effective deterrent; nevertheless, for other incidents, prompt legislation is necessary.

The Wire's Heartland Hatewatch project has been tracking hate crimes and hate speech in six north Indian states since October 2021, and during the course of four months leading up to the 2022 assembly elections, it has identified at least 89 documented instances of these crimes and speeches. These occurrences occurred in Uttar Pradesh, Madhya Pradesh, Uttarakhand, Bihar, and Haryana, among other states.<sup>120</sup> There are several laws that may be used to stop these violent acts, but none specifically address this problem.

The utilisation of the term “lynching” is conspicuously absent within the confines of the Indian Penal Code (IPC), the legislative framework that governs the criminal justice system in the Republic of India. In accordance with Section 223(a) of the Code of Criminal Procedure (CrPC), 1973, it is permissible to subject individuals or a collective mob, who are deemed culpable of the same offence, to a joint trial. This legal provision allows for the consolidation of multiple defendants into a single trial, thereby streamlining the judicial process and promoting efficiency in the administration of justice. By enabling the simultaneous adjudication of co-accused parties, Section 223(a) serves to expedite legal proceedings and prevent the duplication of efforts that would otherwise arise from conducting separate trials for each individual offender. Consequently, this statutory provision facilitates the consolidation of cases involving similar charges, ensuring a more expeditious and cost-effective resolution of criminal matters. The provision under scrutiny has, regrettably, failed to yield any discernible progress in the pursuit of justice for lynching cases. In addition to the aforementioned points, it is imperative to acknowledge that the Indian Constitution, being a paramount legal document, encompasses provisions that regulate the realm of free speech, particularly with regards to expressions that incite violence. These provisions are enshrined within Articles 19 and 21 of the Constitution, which hold significant importance in safeguarding the delicate balance between the fundamental right to freedom of speech and the imperative need to maintain social harmony and public order. The discourse shall now delve into an analysis of various sections of the Indian Penal Code, namely Sections 124A, 153A, 153B, 295A, 298, and 505. Additionally, the study shall encompass Sections 8, 123, and 125 of the Representation of the People Act of 1951, Section 7 of the Protection of Civil Rights Act of 1955, Section 3 of the Religious Institutions (Prevention of Misuse) Act of 1988, Sections 5 and 6 of the Cable Television Network Regulation Act of 1995, as well as Sections 4, 5B, and 7, The presence of numerous and indeterminate regulations pertaining to

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<sup>120</sup> Naomi Barton, ‘ 89 instances of Hate Crimes, Hate Speech Across Six North Indian States in Four Months’ (The Wire, 9 March 2022) <<https://thewire.in/communalism/89-instances-of-hate-crimes-hate-speech-across-six-north-indian-states-in-four-months>> accessed 26 June 2023

a particular subject matter has engendered an insurmountable predicament in terms of effective governance, thereby necessitating the implementation of a unified legislative framework. The phenomenon of lynching, a form of extrajudicial punishment carried out by a mob, has garnered significant attention in India. The esteemed Indian Supreme Court, recognising the gravity of this issue, has aptly described these acts as “horrific acts of mobocracy.” In response to this alarming trend, both the federal and state governments have been impelled to take decisive measures encompassing prevention, remedy, and punishment, with the ultimate objective of eradicating this abhorrent practice. In accordance with the prevailing legal framework, law enforcement agencies have been duly instructed to diligently document and disclose the identities of individuals engaging in activities of a particular nature, thereby warranting the initiation of legal proceedings. Specifically, such actions are deemed to fall within the purview of a First Information Report (FIR) as stipulated under Section 153A of the Indian Penal Code, alongside other pertinent statutes. In its pursuit of expediting legal proceedings and ensuring the thorough prosecution of individuals implicated in instances of mob lynching cases, the Supreme Court has actively advocated for the implementation of daily trials within the framework of fast track courts. By endorsing this approach, the Court seeks to maximise the efficiency of the judicial process while upholding the principles of justice and the rule of law. The Supreme Court, in its pursuit of effective control, has issued mandates to both the federal government and state governments, compelling them to undertake a comprehensive array of measures aimed at prevention, cure, and remedy.

The burgeoning nature of the ongoing cases is manifesting in their expanding magnitude, which is further compounded by the concomitant generation of additional instances. The concept of mobocracy encompasses not only the exercise of collective decision-making by the masses, but also encompasses the disturbing phenomenon of mass lynching. Against the backdrop of the progressive trajectory of American civil rights advancement, it becomes evident that the abhorrent practise of lynching has witnessed a regrettable surge in frequency, thereby necessitating a comprehensive examination of its genesis and perpetuation. In light of the aforementioned circumstances, it is imperative to acknowledge that the absence of anti-lynching statutes in certain states can be attributed to the structural framework of the American government. The nation of India is renowned for its remarkable diversity, encompassing a multitude of conditions and characteristics that span a wide spectrum. In order to effectively maintain order and harmony amidst these multifaceted and demanding



social circumstances, the legal framework of the country is firmly rooted in the fundamental principles enshrined within the Indian Constitution.

In considering the matter at hand, it is imperative to acknowledge the inherent improbability of a universally applicable principle governing the behaviour and characteristics of individuals. The aforementioned rule serves as a mechanism for initiating a dispute resolution process, with the primary objective of alleviating the prevailing tension within a given context. The historical backdrop of post-independence India has witnessed a persistent discord between the Hindu and Muslim communities, which has manifested itself in various forms of social unrest. Notably, a significant number of incidents involving mob lynching cases have emerged as a consequence of what is commonly referred to as “dairy monsters butcher” incidents or other instances that have provoked critical inquiries. The present concern revolves around the potential occurrence of a rapid and widespread act of extrajudicial punishment, commonly referred to as a mass lynching, wherein individuals who are unjustly apprehended and subsequently deprived of their fundamental entitlement to exercise self-defense face grave consequences. In light of the aforementioned, it is imperative to acknowledge that Article 21 of the Indian Constitution unequivocally posits that the preservation and safeguarding of human lives stands as the paramount objective of the constitutional framework. The statement posits that it adheres to the foundational principles articulated in the Preamble of the Constitution. The proposition posited by the user contends that entrusting the law to the capricious whims of unruly mobs, culminating in acts of extrajudicial violence, yields no advantageous outcomes for any party involved. Consequently, it is imperative that legislative measures be enacted to reprimand and discipline these individuals. In light of legal principles and their inherent implications, it is imperative to acknowledge that the mere act of engaging in military solicitation or engaging in trademark infringement carries with it the potential consequence of an individual’s demise. The imperative to restrict the magnitude of grave peril is of utmost significance, as its unmitigated manifestation would inevitably engender deleterious consequences for the collective recollection of mass lynching cases within society. The primary aim of this research endeavour is to construct an all-encompassing legal framework, akin to the MASUKA, with the explicit purpose of safeguarding and upholding the fundamental human entitlement to life for individuals of the male gender. The present discourse is enriched by the inclusion of pertinent information pertaining to the distressing phenomenon of lynching in the Indian context, as well as the subsequent incorporation of relevant

provisions within the Indian Penal Code (IPC). This comprehensive elucidation has undeniably fortified my unwavering endorsement of the imperative need to embrace and effectively implement legislation specifically designed to combat the abhorrent act of lynching. The confirmation of the development of an alternative plan for IPC anti-lynching legislation, which would facilitate the implementation of anti-lynching laws in India, is evident from the aforementioned information. In the realm of socio political discourse, it is worth noting that while the aforementioned phrase does not explicitly allude to the abhorrent act of massacre, there exists a prevailing belief that “MASUKA” serves as a symbolic emblem employed by vast assemblages to vehemently denounce the heinous practise of lynching. In order to comprehensively address the multifaceted issue of criminal activities, it is imperative to incorporate a section that delves into the crime of slaughter within the present draughts. This particular criminal offence, characterised by the intentional and unlawful killing of living beings, necessitates a thorough examination in order to shed light on its various dimensions and implications. The conceptual framework presented herein is indeed commendable, as it aptly and comprehensively tackles a multitude of concerns pertaining to the prevention of large-scale acts of extrajudicial violence, commonly referred to as mass lynching cases. In light of our comprehensive examination, it has come to our attention that certain alterations are imperative in order to enhance the fundamental analysis of the text. Consequently, we strongly recommend that these adjustments be implemented prior to the formalisation of the document into an Act. The cessation of the practise of lynching is imperative due to its propensity to engender a multitude of deleterious consequences, including but not limited to the proliferation of violence, the cultivation of contemptuous sentiments, the exacerbation of conflicts, and the instigation of various other adverse emotional states. The act of lynching, in its essence, is a practise that is fundamentally detrimental to the well-being of a nation and its populace at large. The imperative for individuals to comprehend the profound significance of every human existence cannot be overstated. The act of taking another individual’s life solely on the grounds of uncertainty cannot be deemed morally or ethically justified.

People ought to desist from being the ones who enforce the law on themselves. The courts and the police are responsible for upholding the rules of discipline in the community. The only option at this point is to resort to physical force. The simple act of one individual speaking can have an effect on the entirety of the audience. “Raise your voice, not your hand” if you need to make a change in a public setting. In addition, the government needs to pass a

new law known as MASUKA, which will bring together respectable actors with political players in an effort to find a solution to the problem. Unfortunately, America's highest court has failed to recognise the gravity of the lynching problem. Because this is not the issue at hand, it is not necessary for us to pass any extra legislation in the middle. The declaration that was issued by the house priests does not encourage too many people to have strong convictions. There is no way to solve this issue from the very top down. Lynching is more of a problem in the Hindi belt than it is anywhere else in the country as a whole. It has to do with the belief that many Hindus, including some people who are affiliated with the Parivar but not all of them, have that a BJP administration is an open invitation to persecute or kill Muslims. But this is not necessarily the case. It's possible that the issue is as wide as it is in Alwar or as tight as it is in Ghaziabad's marriages. There is a possibility that a continuously Muslim family is rumoured to be consuming or stockpiling hamburgers at their house. Any explanation will do in this situation. The recruitment of a moment horde is facilitated by online networking, and the moment horde draws its strength from the tenacity of Muslim males. These incidents are purely local in scope, as they only take place within the BIMARU states. Peace is a matter of state concern. We already have more than sufficient legal provisions in the IPC to deal with the issue. It is not a lack of legislation that is the issue; rather, it is a lack of commitment to enforcing the rules that are in place. Bringing dairy cows back under insurance was more important to the Alwar police than taking care of the Muslim man who was half-dead in their hands, as seen by their negligent attitude towards the lynching victim, which reveals that the police in Alwar believed that bringing dairy cows back under insurance was more vital. For a very long time, the law enforcement at the state level, particularly in the Hindi belt, has been a source of embarrassment. Political worries in Uttar Pradesh (when it was governed by the Samajwadi Party) and Bihar (when it was governed by the RJD) had a significant effect on lawbreakers. There was a lot of coercion and grasping going on. At the beginning of each new control UP gathering, the police are first rotated around the states. This is done in order to ensure that they get their top choices for less important assignments. People who are part of the group that rules the local area learn that they are immune from legal action. MLAs and MPs behave like local rajas. It is difficult to anticipate when there will be sufficient equity. We have broken the law at surrounding levels so that the politically controlled police can do their jobs properly. There are occasions when the haughtiness of those who engage in such activity is a contributing factor to how terrible it is. There has been an outpouring of regret in Kathua, notwithstanding the fact that one of the dissenters who supports the accused has advocated for an expansion of Jammu's

territorial boundaries. That would put the political establishment in complete control of the police force. There is no way for the middle to solve any of these issues by issuing a warning or passing legislation. In reality, the state is much more dispersed in a number of regions of India than it ever was. The challenge is to re-establish a credible government, free the police from any local political influence, reform the local judicial system, and reassess the neighbourhood's current standing. Indeed, we are surrounded on all sides by swarms of people who have been lynched. This has been the case without interruption. Nevertheless, none of us gave a damn about the veracity of what was being asserted until somebody pointed out that the status or religion of the person in question was relevant.

Police officials don't always take mob lynching cases seriously. The lynching of Pehlu Khan in Rajasthan is a prime example. The deceased, who was murdered in 2017 in Alwar by a mob of self-styled gaurakshaks for transporting animals, was charged with cow smuggling by the state police.<sup>121</sup> The idea of supposedly "instant" justice is one of the main factors contributing to the persistence of mob lynching cases in our culture. This implies that society feels compelled to participate in situations without even being aware of the issue, as psychologist and Supreme Court attorney Anuja Trehan Kapur accurately notes.

Kapur claims that "lynching happens when a mob comes together and feels that they have a responsibility to society and that the police or any other administrative body can't do justice to that responsibility".

There is a widespread belief that "criminals" escape punishment and that those convicted of horrible crimes like rape, child trafficking, and cow slaughter are likely to escape punishment. In addition, a survey of several instances shows that such so-called forms of justice are more usually recognised regardless of whether the alleged crime was committed by a Muslim, Dalit, Christian, or tribal person. According to an EPW assessment, discrimination against Muslims and Dalits" continues to plague the very institutions supposed to produce a better society.<sup>122</sup>

### **5.3 Suggestions**

There are various recommendations for handling mob lynching cases:

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<sup>121</sup>Shruti Jain, 'Alwar Mob Lynching Victim Pehlu Khan Chargesheeted by Congress Govt' (*The Wire*, 29 June 2019) <https://thewire.in/rights/alwar-mob-lynching-pehlu-khan-chargesheeted-congress-rule> accessed on 26 June 2023.

<sup>122</sup> Vishnu Padmanabhan, 'The Discriminations Dalit and Muslims face in India' (*mint*, 24 October 2018) <https://www.livemint.com/Politics/69Nrdm8oMIvspVNHgdBPkK/The-discrimination-Dalits-and-Muslims-face-in-India.html> accessed on 26 June, 2023.

- **A new legislation:** A new law will establish responsibility for those working to maintain law and order. In order to ensure accountability and responsibility for those responsible for upholding law and order in society, new legislation is about to be passed. The urgent problem of mob lynching, which poses a serious risk to both human life and property, should be addressed by this statute. The main goal of this regulation should be to generate a sense of terror and deter people from acting vigilantly or taking matters into their own hands when confronting suspected offenders. If such proposed law is passed, those found responsible for taking part in mob lynching cases will face harsh penalties. The severity of these sanctions is meant to serve as a deterrent to potential offenders by emphasising the dire repercussions their acts will bring about. The law seeks to safeguard everyone's fundamental rights and safety, regardless of their claimed crimes or acts, by enforcing harsh punishment. The law also includes the idea of compensation in addition to punishment. This means that people who commit mob lynching cases will not only be subject to legal repercussions but also be compelled to make up any harm done to the victims or their property. The inclusion of reparations strives to make sure that the offenders are held responsible for their acts and that the harmed parties receive restitution. The new law aims to maintain the values of justice, fairness, and human rights by clearly defining the obligations and penalties for those responsible for mob lynching cases. It attempts to discourage potential offenders and provide a clear message that violent crimes and vigilantism won't be allowed in society. The Act aims to create a more secure atmosphere where people can turn to the existing legal system to resolve disputes and uphold order rather than using mob justice through these means.

Additionally, by directly addressing mob lynching and the demand for accountability, the act should increase public awareness of the seriousness of the problem. It stresses that upholding law and order is the responsibility of the government and exhorts people to put their faith in the established legal systems rather than resolving issues on their own. The ultimate goal is to promote a sense of security, trust, and confidence in the legal system so that society can run smoothly and productively.
- **Making contact with locals and the police** - The local population's trust in the police and administration should be boosted by frequent, personal meetings between police officers and local residents, youngsters, and young adults attending college.

- **Educate the public campaign:** An intensive public education effort shall be launched in response to the worrying increase in mob lynching instances. This initiative, run in conjunction with the government and non-governmental organisations (NGOs), attempts to raise public awareness of the problem of mob violence and improve literacy levels. Targeting people of all ages and backgrounds, it shall be implemented at numerous educational institutions, including universities, schools, and other pertinent organisations.

To effectively address the issue of mob lynching, the public education campaign shall employ a variety of goals and tactics. First and foremost, it shall emphasise spreading knowledge about the hazards and effects of mob violence. Students and participants shall be given accurate and thorough knowledge about the terrible effects of mob lynching cases on individuals, families, and communities through educational materials, workshops, seminars, and interactive sessions. The campaign should aim to highlight actual instances and case studies in order to emphasise the seriousness of these acts and their lasting effects.

The campaign shall emphasise the value of tolerance, empathy, and respect for diversity in addition to raising awareness. It should work to develop an inclusive society and encourage conversation as an alternative to using force to settle disputes. Participants shall be urged to comprehend and value many points of view, cultures, and beliefs through seminars and interactive activities, helping to create a community that is more peaceful and unified.

The campaign shall also advocate for responsible citizenship, media literacy, and critical thinking. Participants should be given the knowledge and skills necessary to critically assess information, question prejudices, and distinguish between reliable sources and false information. Participants shall be made aware of the role that false information and rumours frequently play in provoking mob violence. The programme should aim to stop the propagation of divisive narratives and lessen the possibility of mob lynching cases inspired by false information by encouraging people to think critically.

The proper implementation of this education campaign shall depend on the engagement of government organisations and NGOs. In order to create instructional materials, curricula, and training programmes, these organisations should contribute knowledge, assets, and finance. The campaign will be more successful and have a

longer-lasting effect on society if educational institutions, law enforcement organisations, and local leaders work together.

The purpose of the extensive public education effort is to change people's perspectives, encourage peaceful cooperation, and deter mob violence. The initiative aims to empower citizens to actively contribute to a safer and more compassionate society by empowering people with knowledge, empathy, and critical thinking abilities. By encouraging people to report any possible mob violence and instilling a sense of responsibility, it hopes to develop a shared commitment to maintaining the ideals of justice and human rights.

- **Declaring a national crime** - Instead of introducing so many sub sections in existing law, declare this offence as a national offence in existing law and focus on the execution and implementation of law
- **To put an end to hateful and false news** - WhatsApp, Twitter, Instagram, and other social media platforms are in charge of disseminating false information and hate speech. Therefore, social media platforms should be continuously monitored for false news and hate speech, and any incidents of this kind should be thoroughly investigated without any political pressure or interference.

People who promote false news and hate speech should be subject to strong penalty requirements.

- **Judicial and police reforms** - In order to strengthen the criminal justice system, substantial reforms are thought required in light of the crucial role that judges and police play in preventing and combating crime. Significant obstacles prevent the judicial system and law enforcement from delivering prompt and efficient justice. Reforms aimed at the court and police forces are essential to solve these problems. Reducing the backlog of court proceedings is one of the main areas of concentration. The judicial system's massive backlog of open cases is a major hindrance to the prompt administration of justice. Reforms aimed at streamlining court procedures, improving judicial effectiveness, and expanding the capacity of courts to handle cases will be implemented to address this issue. This could entail the appointment of extra judges, the creation of specialised courts for particular types of cases, and the use of technological tools to speed up the legal process. The reforms' goal is to ensure that justice is delivered promptly and impartially while re-establishing public confidence in the judiciary by tackling the backlog.

In a similar vein, police reforms are necessary to improve the efficiency of law enforcement organisations in reducing crime. Police departments are frequently overworked and overburdened as a result of the existing workload, which compromises their ability to successfully combat criminal activity. The reforms in this field will concentrate on a variety of issues, including expanding the size of police forces, enhancing professional development and training programmes, and using cutting-edge technology and investigative methods. These changes are intended to give the police the tools and training they need to prevent crimes and conduct investigations more effectively, ultimately maintaining public safety and regaining the public's trust in law enforcement.

The reforms will prioritise the need for accountability, openness, and professionalism within the judicial and police institutions in addition to dealing with workload and capacity challenges. There will be procedures put in place to make sure that police personnel and judges uphold the ethical requirements of justice, impartiality, and respect for human rights. This can entail creating impartial oversight organisations, enhancing internal disciplinary processes, and encouraging an environment of integrity and responsibility within these organisations.

- **To create special and expedited courts:** The creation of special and accelerated courts is thought required in order to adequately handle the grave crime of mob lynching and achieve prompt justice. While there are many courts in the current legal system, including criminal, family, civil, and labour tribunals, mob lynching cases need a special response owing to their seriousness and cultural effect. To prosecute incidents of mob lynching more effectively and narrowly, special tribunals may be necessary.

The main reason for creating special tribunals for mob lynching cases is to hasten the legal procedure. Given the seriousness and urgency of these crimes, delays in the legal system may damage public trust and reduce the deterrent impact. Mob lynching cases will be given priority in special courts, ensuring that they are processed quickly and effectively and eliminating the backlog often faced in normal courts. This accelerated procedure enables quicker settlement, acting as a deterrence and enhancing public confidence in the judicial system.

Additionally, special mob lynching tribunals would follow special protocols designed to fit the nature of these crimes. This might include simplified and expedited procedures including specialised investigative teams, hurried trials, and rigid



deadlines for case closure. Special courts may make sure that justice is done without sacrificing due process by simplifying the processes. In order to ensure that all facets of the case are successfully handled while retaining efficiency, such personalised methods may assist overcome the difficulties often connected with complicated and sensitive situations.

Special courts may expedite the legal process while also offering a tailored setting for dealing with mob lynching instances. These courts' judges would be chosen based on their knowledge, experience, and sensitivity to mob violence-related concerns. Judges and court employees may be given the information and skills they need to manage these special circumstances by participating in specialised training programmes. The quality and efficacy of the legal procedures are improved by this specialisation, which makes sure that the nuances and complexity of mob lynching situations are well grasped.

Additionally, the creation of specialised courts sends a clear message that mob lynching is a severe offence that will be prosecuted quickly and harshly. It demonstrates society's will to stop such crimes and its commitment to upholding the rule of law. The gravity with which these crimes are considered is shown by the concentrated attention given to mob lynching cases, which gives comfort to the victims and their families by reinforcing the idea that justice will be served.

- **Rapid trial:** The legal system places a lot of emphasis on the idea that “justice delayed is justice denied”, emphasising the significance of swift case settlement. This rule is especially important in mob lynching cases since it may be possible for witnesses to renounce their statements or alter their stories as time goes on, making it urgent to wrap up investigations and hasten trials. Rapid trials are necessary to successfully address this problem and guarantee that justice is not only rendered but also respected by all parties concerned.

A speedy trial's accelerated process tries to reduce the amount of time between the crime's commission and the ruling. The integrity of the judicial system may be compromised by witness tampering, intimidation, or coercion, which is why this expedited schedule is essential. The likelihood of witnesses withdrawing or changing their testimony is decreased by swiftly wrapping up investigations and proceeding with the trial, guaranteeing a more trustworthy and accurate presentation of the evidence.

Several strategies may be used to enable quick trials. First and foremost, investigative agencies must have the resources and tools to carry out comprehensive and effective investigations. This comprises qualified employees, cutting-edge forensic equipment, and efficient systems for gathering evidence. Mob lynching instances may be investigated more quickly and accurately with the help of specialised teams, who can also ensure that evidence is gathered before it is corrupted or inaccurate.

In order to move mob lynching cases through more quickly, the judicial system should give them top priority. This entails creating special courts or designating certain judges to hear these matters. The ability to handle the proceedings effectively while preserving the values of justice and fairness is a skill that judges sitting over speedy trials should have. To guarantee that cases are heard without unnecessary delays and to enable a speedy conclusion, clear norms and deadlines should be created.

Moreover, trials may be accelerated significantly by technology developments. Trial procedures may be streamlined and unneeded delays brought on by logistical issues reduced via the use of electronic document management systems, digital evidence presentation, and video conferencing for witness testimony. By enabling witnesses to provide their evidence remotely when needed, technology not only saves time but also lessens the stress on them.

While speedy proceedings are necessary, they shouldn't jeopardise the rights of the accused or the rule of law. Throughout the accelerated processes, the assumption of innocence, the right to a fair trial, and the right to counsel must be respected. Striking a balance between efficiency and upholding the basic rules of justice should be attempted.

The judicial system may successfully handle the problem of witness retractions or changes in testimonies by giving priority to quick trials in mob lynching instances. A prompt conclusion lowers the possibility of witness fraud while simultaneously restoring the public's faith in the legal system. The knowledge that justice is being speedily served and that offenders are held responsible for their acts may provide comfort to victims and their families. Rapid trials ultimately strengthen the idea that justice is not only carried out but also perceived to be carried out, fostering a feeling of fairness and confidence in the judicial system.

- **Simple process:** In the event that an issue arises, the solution procedure is quite difficult. Sometimes, because of the difficult process, cases are not recorded. So the procedure to address that issue should be straightforward.
- **To improve the police officer's and nodal officer's accountability:** Measures to increase the accountability of both nodal officials and police officers will be put into place in order to improve accountability within law enforcement agencies, guarantee effective investigation, and ensure the prevention of mob lynching cases. These steps are intended to make them accountable for their obligations and deeds, ensuring that they carry out their tasks properly and take the necessary steps to stop or address mob violence. The nodal officer's involvement in looking into complaints of mob lynching cases is crucial. The task of directing and coordinating the investigations into such situations will fall to these personnel. Clear policies and procedures will be set describing their responsibilities, rights, and anticipated behaviour in order to guarantee their responsibility. When looking into mob lynching cases, the nodal officer will need to exhibit professionalism, effectiveness, and a proactive attitude. The nodal officer will be held responsible for any errors or omissions in the investigative process if they fail to complete these obligations or act negligently while performing their duties.

Special task teams would be constituted in each area or region under the direction of the nodal officer to look into occurrences of mob lynching. These task teams will be composed of officers with specialised training and the required expertise to handle such difficult situations. The nodal officer will supervise their activities and make sure that investigations are carried out swiftly, completely, and objectively.

Officers who witness mob lynching cases and fail to take proper action will face disciplinary sanctions in order to ensure responsibility within the police force. Any failure to speak out or act to stop acts of mob violence would be seen as a grave dereliction of duty. The required steps, such as suspensions, transfers, or other types of disciplinary measures, will be implemented against such officials. They will be subject to internal disciplinary proceedings. To ensure that they are held accountable for their acts, policemen who are discovered to have been complicit or actively engaged in the mob lynching will be punished as offenders and convicted in the same court as the primary culprits.

The objective is to develop a culture of accountability and professionalism within law enforcement organisations by setting up a system of accountability for nodal officials and police personnel. This system of accountability acts as a deterrent, requiring officials to perform their responsibilities carefully and actively try to stop mob lynching cases. Additionally, it makes it quite apparent that acquiescing in mob violence is prohibited and will result in severe disciplinary action as well as legal repercussions.

The acts and behaviour of nodal officials and police officers engaged in mob lynching instances would also be subject to scrutiny and transparency measures. To guarantee that investigations are handled fairly and that officials are held responsible for any wrongdoing or carelessness, independent oversight organisations, internal affairs departments, or civilian review boards may be formed.

The efficiency of law enforcement in preventing mob violence will ultimately increase when nodal officers and police officers are held to a higher standard of responsibility. It establishes a system where police are encouraged to take proactive action, averting mob lynching situations, and it makes sure that justice is served when such crimes do occur. The objective is to increase public confidence, enhance the rule of law, and stop such episodes of mob violence through enforcing responsibility.

- **Balanced growth in the area:** Only a tiny portion of the population is impacted by mob lynching cases, which often depend on caste, religion, creed, and place of birth, among other things. The government should take action to promote balanced regional development and minority section growth.
- **Protection of victims and witnesses** - The first concern is witness safety since most witnesses are hostile as a result of the threat. The police should be held accountable for witness and victim protection not just during the course of an event but also thereafter.

Lynching must be declared a non-bailable crime for their protection.

- **Programmes for victims' compensation:** Comprehensive programmes for victims' compensation and assistance will be put in place to address the severe effects mob lynching has on victims and their families. Recognising the harm done to the victims' bodies, minds, and wallets, it is crucial to provide them the right support so they may heal and seek retribution.

The provision of compensation for the victims and their families is an essential component of these programmes. As a kind of restitution, compensation seeks to lessen some of the victims' immediate financial difficulties while recognising the damage done to them. The compensation might cover a variety of expenditures, such as hospital bills, rehab fees, lost wages, burial costs, and other associated losses. According to the severity of the injury caused and the particulars of each case, the amount of compensation will be decided.

Victims and their relatives will also have access to free legal aid. In order to guarantee that their rights are upheld and justice is done, they must have legal counsel. By offering free legal assistance, victims of mob lynching cases may get in touch with knowledgeable solicitors who can fight for them in court, assist them in seeking the right remedies, and advocate on their behalf. With this help, victims and their families will be better equipped to navigate the convoluted legal system and make their voices heard in the fight for justice. Support services will also be developed to take care of the victims' and their families' psychological and emotional needs. A secure environment for people to express their pain, recover, and rebuild their lives is provided by these services, which may include counselling, therapy, and support groups. Such assistance may play a crucial role in assisting victims to deal with the fallout from the catastrophe and reclaim their sense of normality.

Coordination between governmental organisations, non-governmental organisations, and victim assistance organisations will be formed to guarantee the successful execution of these programmes. The government will engage with these organisations to develop a structure that makes it simpler to get compensation and support services. To inform victims and their families of their rights and the resources available, outreach programmes will be carried out. Additionally, efforts will be made to streamline and speed up the application processes so that victims may get the assistance they need quickly.

Additionally, the creation of a victim compensation fund might provide a reliable method of giving victims financial support. This fund may be supported by a number of sources, including government payments, community donations, or fines levied on those responsible for mob lynching incidents. The victims will be given the help they need thanks to the fund's open management and fair and equitable administration.

Overall, society's dedication to supporting mob lynching victims on their path to recovery and justice is shown by the creation of extensive programmes for victims'

compensation and assistance. These programmes attempt to lessen the costs on victims and their families, improve their well-being, and reinforce their legal rights by offering financial help, legal representation, and support services.

- **Strict Penalties** - A mob lynching is an additional killing carried out by the crowd without the proper legal procedure. Therefore, the penalty must be severe and the crime must become a cognizable, non-bailable offence.

**In addition to these recommendations, the people also offered some other comments and ideas:**

- a) Mob lynching should be considered a societal evil, and community assistance is needed to confront the instances.
- b) The superintendent and nodal officer at the scene of the incident should both be held accountable.
- c) Instead of changing the legislation, greater focus should be placed on education.
- d) The criminal faces heavy punishment from the Indian government as well as the state governments.
- e) Hang those who are cruel till death.
- f) Religion-based education and its institutions must be closely inspected to see whether they are inciting hate towards other religions and their adherents.
- g) A comprehensive legislation against mob lynching cases is required, but we also need to take into account the political motivations behind these incidents. The government should also take the necessary steps to raise awareness of this crime and educate people about their rights and obligations.
- h) The administration, or police system, should be given complete power and the ability to employ it immediately, but within certain bounds. Instead of challenging and criticising every action it takes. We can observe during lockdown period that our police system is far superior than our preconceptions.
- i) People's perceptions of crowds having no faces must be changed. That is the only remedy.
- j) Mob lynching ought to be considered a terrorist act.
- k) Obey one country, one rule. On this offence, the state is unfair.
- l) To stop these tragedies, stricter regulations must be created and current rules must be vigorously enforced.
- m) To cope with mob lynching cases, a special squad of police should be formed.

- n) Prohibiting all extreme religious groups including the PFI, RSS, and Bajrangdal.
- o) One of the terrible crimes is mob lynching. This crime may only be blamed on an unspecified cause. Although religion and caste are the main contributors, there are other factors at play, such as personal grudges. Making new laws may not be the best approach; instead, the IPC and CrPC will suit the purpose and the changes to these two laws offer criminals a feeling of more guilt. Less rigid rules should be implemented with severe penalties. In addition, because these transgressions are against humanity and call into question what it is to be human, moral education for individuals of all ages, not just schoolchildren, has to be emphasised.
- p) Rule of law must be rigorously upheld without partiality.
- q) We need a society that understands that to damage others is to harm oneself by default and by nature more than we need law and order. The only way to exist is to love.
- r) Hinduism is famed for its internal scientific experimentation, and our ashrams served as testing grounds for a variety of perspective-altering techniques. We need to reestablish that culture, or practise more quietly.
- s) Since the majority of persons participating in mob lynching cases often do not lack a fundamental education but rather moral ideals, families, schools, and universities should educate about discipline, respect, equality, and moral values. Every religion and caste should be respected, yet when leaders in politics, the entertainment industry, the media, and role models themselves actively promote hostility against other groups, the general public tends to do the same. The ordinary people's deities have a duty to uphold harmony and respect for everyone. The laws are the same for all offenders, regardless of caste or religion, but how much equality is really implemented is a huge concern, which is what causes such hostility in many groups and the occurrence of mob lynching cases.
- t) There must be zero tolerance for mob lynching cases.
- u) Private WhatsApp conversations between individuals should be maintained and should not be shared. However, if the person who created the message wishes to allow forwarding, the chat should be made public and given a special ID that may be used to identify the original author. Once detected and the sender identified, WhatsApp will be able to block such messages throughout its network when law enforcement agencies submit a court-ordered request.
- v) The state and federal governments shall broadcast warnings on radio, television, and the internet that lynching and mob violence will carry severe consequences.

- w) Giving local law enforcement agencies the authority to take proactive action.
- x) The local organisation has to be more responsive in handling conflict and uncertainty in neighbourhood networks.
- y) Create a framework to prevent political interference from hindering studies on reciprocal viciousness.



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