
DEMOCRACY LOSING GROUND TO MOBOCRACY: A DIVERSE SOCIO-LEGAL PERSPECTIVE

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ABSTRACT

The rise of rational masses which played a major role in strengthening democracies worldwide, has subjected these very societies to various kinds of confusion and misfortunes due to misinformation and spread of fake news, thereby, disrupting the very foundation of the right to freedom of speech and expression. At the heart of such chaos, lies intolerance which gives rise to mob violence whereby the democratic values and mechanisms are reduced to play at the hands of ill-informed mob which disregards these values at the behest of its leadership. The Supreme Court of India urged the government to pass a new anti-lynching law and to curb the spread of Internet rumours after dozens of people were killed in a string of mob attacks fuelled largely by social media¹. It is disturbing to note that mobocracy in India is moving towards becoming the new “normal.” The paper seeks to lay emphasis on the mobocracy and human rights violations that are taking place in different parts of India. The paper is divided into four parts. The first part will deal the concepts of democracy and mobocracy. Secondly, it will deal with the changing dynamics of democracy through mobocracy. The third block will deal with the effects of current legal framework on mob violence and its analysis. Lastly, the paper seeks to suggest guidelines and measures to prevent mob violence through a central legislation. Recently, the state governments of Manipur, Rajasthan and West Bengal, came up with their laws against mob-violence and mob-lynching. However, the aforementioned problems are grave human rights violations and a strict Central legislation is the need of the hour.

Keywords: Democracy, Mobocracy, Mob-Violence, Lynching, Central Legislation.

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¹ (2018) 9 SCC 501

1. Introduction

The rise of rational masses which played a major role in strengthening democracies worldwide, has subjected these very societies to various kinds of confusion and misfortunes due to misinformation and spread of fake news, thereby, disrupting the very foundation of the right to freedom of speech and expression. At the heart of such chaos, lies intolerance which gives rise to mob violence whereby the democratic values and mechanisms are reduced to play at the hands of ill-informed mob which disregards these values at the behest of its leadership. In theory both mobocracy and democracy seem to be governed by the majority views but it is very significant to highlight that the outcome of the two can be drastically different. Whereas, mobocracy resorts to violent seizure of power and control, the later, i.e., democracy is a holistic approach whereby, freedoms, human rights, constitutional values are at core of majority based order.

1.1 Concept of Democracy, Mobocracy and Vigilantism

Democracy: The term democracy is derived from two distinct Greek terms ‘demos’ which signifies people and ‘kratos’ which denotes power; consequently, democracy is an upshot of ‘the power of the people’: a system of governance which depends on the will of the people.

The idea of democracy derives its moral strength and popular appeal from the following two principles:

a. **Individual Freedom:** The citizens are bestowed with privilege, liberty and control over their actions (with reason). They are allowed to style their own rules by themselves following the principles of natural justice, human rights and rule of law.

b. **Equality:** The idea of equality and equity are the heart and soul of the democratic principles. It guarantees everyone with the same level of opportunity to influence the decisions that affect people and the society.

Dissent and criticism are the essence of democracy²; it should neither be obstructive nor destructive, but rather constructive. Moreover, peaceful protest by the citizen of the country is the matter of right and it involves two fundamental rights, by virtue of Article 19(1) (a) i.e. freedom of speech and expression and Article 19(1) (b) which is to assemble peacefully and without arm and ammunition. Furthermore, these provisions are subjected to reasonable

² Vice President of India, Venkaiah Naidu addressing a gathering on the 66th National Film Awards

restrictions as provided under Article 19(2) of the Constitution of India, 1950. In the case of *State of Bihar v. Shailabala Devi*³, Supreme Court of India observed that:-

‘Our social justice interest ordinarily demands free propagation and interchange of views, but circumstances may arise when the social interest or public order may require reasonable subordinate of the social interest in free speech and expression is the needs of our social interest and public order’.

There are various other provisions which demonstrate the democratic spirit as sine qua non of the law of the land.

Mobocracy: According to the Merriam-Webster dictionary, *mobocracy* denotes ‘rule by the mob’ or ‘the mob as a ruling class’⁴, meaning thereby a type of political system at the behest of a handful of people, who govern the majority with an iron fist through their violent actions. In other words, the mob confers upon itself the right to take the law into their own hands for administration of their ‘perceived belief’ which is usually based on some prejudice or rumour or ideology. However, where the boisterous mob kills a person for allegedly violating the perceived belief is known as ‘mob lynching’. It amounts to extra-judicial punitive measures without following due process of law; such a situation of blatant human rights violation is an outburst of an existing contradiction in the faith of one community about an issue in contrast to the views of other communities. Consequently, such acts of terror make way for mobocracy in a democracy.

Definition: *Mobocracy is an act of illegal omission or commission, proscribed or punishable by law, committed at the behest of directed or undirected, misinformed or ill-informed, mob or group of people or vigilantes in furtherance of establishing their belief or ideology.*

Vigilantism: ‘Vigilantism’ is the quintessential of mobocracy and mob violence as it refers to ‘the acts of resorting to violence by members of the society (vigilantes) against fellow citizens without any legal sanction or procedure established by law’. Vigilantism essentially contains six⁵ necessary features:

- (i) *Planning and premeditation by those engaging in it;*
- (ii) *Its participants are private engagement is voluntary;*
- (iii) *It is a form of ‘autonomous citizenship’ and, as such, social movement;*

³ 1952 Cr. LJ 1373

⁴ < <https://www.merriam-webster.com> > accessed 8 March 2022

⁵ Les Johnston, “*What is Vigilantism?*”, 36 Brit. J. Criminology 220, 5 (1996)

- (iv) *It uses or threatens the use of force;*
- (v) *It arises when an established under threat from the transgression, the potential transgression, or the imputed institutionalized norms;*
- (vi) *It aims to control crime or other social infractions assurances (or 'guarantees') of security both to participants and to others.*

2. Mobocracy and Mob Violence: A Judicial Perspective

The right to protest as enshrined under the Constitution of India should be enforced in its true spirit without an exception in order to protect the sacrosanctity of the judiciary and maintain the public trust. *There is a direct bearing on the 'public trust and confidence of the people in the judicial system' and the rule of law versus the mobocracy. Legal issues cannot be allowed to be raised and settled in streets, as these are not decided by show of strength but on merits of the controversy in accordance with law, for which robust judicial system is available*⁶. Further down under the guise of freedom of expression and the right protest; the mob should not be allowed to convert the protest sites into a crime den. The recent occurrences of violence following various protests post-2014 regime change; point out that mobocracy is thriving significantly under the umbrella of democracy. But the all-important issue is that can mobocracy be an alternative to democracy in a diverse country like India?

The Indian judiciary has been quite vigilant on the menace of mobocracy and has demonstrated a cold shoulder to the recurrence of such horrendous violations of human rights. In the case of *PUCL v. Union of India*⁷, the court pointed out that an uninformed citizenry would lead to the defoliation of democracy and lessens the gap between democracy and mobocracy. It made a pragmatic observation that,

“Disinformation, misinformation, non-information, all equally create an uninformed citizenry which would finally make democracy a mobocracy and a farce. The primary duty of the judiciary is to uphold the Constitution and the laws without fear or favour, without being biased by political ideology or economic theory.”

⁶ CBI ACB Kolkata v. Firhad Hakim, 2021 SCC OnLine Cal 1642

⁷ (2003) SCC OnLine SC 394

Furthermore, in the case of *Jerome Christudas v. State of Kerala*⁸ the apex court was of the view that protest in the name of dissent cannot resort to mobocracy and take the rule of law for ransom and negate the statutory mandate. The court observed:

“Indeed, exalted as the right to protest is, as has been consecrated under Article 19(1)(a) & (b) of the Constitution, albeit subject to the restrictions under Article 19(2) thereof, the State is, equally under an obligation to take adequate steps to preserve the peace and to protect the privacy, the lives, and the property of its people. So long as the democracy does not descend into mobocracy, the protest is paramount as a method of democratic discourse and also as a mode of dissemination of information. It is, to repeat, at best a method to exert pressure on the legislature or the executive to change or fine tune its legislative or administrative policies as the case may be. It is, without any cavil, to be asserted that however justified an instance of protest is, it cannot hold the rule of law for ransom and negate the statutory mandate. Thus, the officials can hardly be heard saying that they could not discharge their statutory duties on a mere premise that there have been protests.”

Congruently, the court in the case of *Mahanagar Telephone Nigam Ltd. v. Bharatiya Mahanagar Telephone Nigam Karamchari Sangh and others*⁹ illustrated that the freedom of speech and assembly is subject to limitations and cannot be exercised anywhere and in any manner according to one’s whips and fancies. It emphasised that,

“The work in public offices must go on smoothly in the national interest — national interest is the highest law to which every other thing is subservient. All our words, deeds and thoughts must measure up to this yardstick. If demonstrations are allowed inside the office, it will not be possible to transact any business and would encourage mobocracy and intimidation. Freedom of speech and free assembly cannot mean that the right can be exercised wherever, whenever and howsoever.”

⁸ (2016) SCC OnLine Ker 10845

⁹ 1991 SCC OnLine Del 236

Moreover, in the case of *Mukesh v. State of Bihar*¹⁰, the Honourable Court emphasised that national identity is paramount and religion is secondary. Mobocratic practices in the name of religion cannot be accepted. The Court remarked,

“When one community fights the other community in a country like India where the rule of Constitution and law has to prevail, sentiments cannot prevail and mobocracy cannot be permitted to disturb public peace and that too between two sections of the society, as basically everybody is first and foremost a citizen of India and then only comes his religion which is to be practiced in his own home and not to be flaunted or worn on the sleeve in public.”

Correspondingly, in the case of *Vasudev Gupta v. State of UP*¹¹, the court illustrated that law cannot be made to dance at the tune of mobocracy and observed:

“Only because of overwhelming population or head count, one group should not have an edge over others' fundamental rights; otherwise, mobocracy shall rule the country. State and its authorities and instrumentality must enforce law with full vigorousness without any discrimination on the basis of caste, creed or religion.”

It is pertinent to note that the Supreme Court expressed its anguish in the case of *Bhagwan Dass v. State (NCT of Delhi)*¹² on the menace of implementing decisions of various dogmatic groups on the populace would lead to mobocracy and is a matter of serious concern for our democratic policy. The apex court observed:

“Organizing Khaps on the caste basis and implementing their decisions instantly will turn the democracy into mobocracy. It will turn India into a banana republic. As noticed by the Supreme Court, honour killing has become commonplace in Western Uttar Pradesh. If the tendency to overreach the rule of law is not nipped in the bud, it would corrode the very foundation of our Constitution on which its grand edifice rests. The consequences are fraught with danger of collapse of our institutions and rule of law that will lead to anarchy.”

¹⁰ 2017 SCC OnLine Pat 949

¹¹ 2011 SCC OnLine All 798

¹² (2011) 6 SCC 396

However, the most noteworthy development on the issue of mobocracy took place in the landmark case of *Tehseen Poonawalla v. Union of India*¹³, where the Apex court addressed the issue of vigilantism, hate speeches and rising instances of mob lynching in the nation. The court paid reliance on the American judgement of *Wilson v. Garcia*¹⁴ to condemn the acts of violence by private individuals/ mob. The court observed:

“The Supreme Court of India asked the parliament to draft new laws on mob lynching condemning ‘mobocracy’. The rising instances of intolerance and fragmentation in the national fabric are a result of mobocracy and the failure of the nation-state to ensure that diverse cultural and religious populations are ensured dignity and justice. Hate-speeches against the other religious/caste communities have increased the instances of mob lynching and cow vigilantism.¹⁵ Bench asked the government to provide “preventive, remedial, and punitive measures” to deal with such offences. In a democratic setup, given the amount of chaos on the one hand and faith upon the constitution on the other, the nation-state has to ensure as well as protect the rights of all the citizens and consider them equal. The horrendous acts of violence like these not just violate the law of the land but also invoke the violation of fundamental human rights. It points out “No individual in his own capacity or as a part of the group, which within no time assumes the character of a mob, can take law into his/their hands and deal with a person treating him as guilty”.¹⁶

The swelling instances of mob violence and lynching in the nation is an apprehension of the undercurrent of intolerance that has made way into the society and in the minds of the populace. The High court of Calcutta in the case of *CBI ACB Kolkata v. Firhad Hakim and Others*¹⁷ lamented on the issue of uncertain legal position as to whether obstruction of government machinery would amount to mobocracy. The court remarked:

“Whether mobocracy, where any law enforcing agency was allegedly obstructed in discharge of its official duty, can have impact on decision or the decision making process, is yet to be gone into.”

¹³ (2018) 9 SCC 501

¹⁴ 471 U.S. 261

¹⁵ *ibid*

¹⁶ *ibid*

¹⁷ 2021 SCC OnLine Cal 1642

It is therefore, imperative on the part of the Central government to come up with a Uniform Central Law to address the issue of mobocracy and provide a deterrence mechanism against future occurrences. Such need has been considered on several occasions but thus far no Bill has yet been proposed in the Parliament.

3. Changing Dynamics of Democracy through Mobocracy in India

Mahatma Gandhi once alleged, *'nothing is so easy as to train mobs, for the simple reason that they have no mind, no premeditation. They act in frenzy. They repent quickly (...).'*¹⁸

Consequently, the frequent occurrence of mobocratic violence has left behind a pertinent question as to ambiguity in fixing criminal liability for the loss of life and property as an outcome of innumerable instances of mobocratic outbursts. Furthermore, it highlights the loophole in the legal jurisprudence as to failure of imposing criminality upon the fierce mob (without a leader). It sets a fatal precedent for the future if the mob 'with rhetoric of transgression'¹⁹ is allowed to get away with acts of violence without taking the responsibility of their acts of crime.

3.1 Mens Rea as opposed to 'Perceived Belief'

The mob in general does not have a conventional frame of mind apart from resorting to violence and hatred in order to meet ends of their preconceived belief, but on the contrary, there have been incidents of mob-violence and mob lynching that took place in a pre-planned manner and on the instructions of certain organisation with an ulterior motive. The piousness of humanity dies because of this appetite for power and dominance over others. The recent controversy over the use of religious symbols such as Hijab in the schools of Karnataka is a classic illustration of mob violence where a petty issue of uniform code fumed fire in the entire nation and ultimately lead to the murder of a young boy Harsh for his anti-Hijab stance²⁰. The aforementioned case, illustrates that the mob carried out the murder with the view to enforce their perceived belief upon that of the dissenting victim 'with rhetoric of transgression'. Furthermore, the rise in the instances of people taking the law in their hands and resorting

¹⁸ MK Gandhi, *'Young India'* < <https://www.mkgandhi.org/indiadreams/chap04.htm/> > accessed 8 March 2022

¹⁹ Les Johnston, *"What is Vigilantism?"*, 36 Brit. J. Criminology 220, 5 (1996)

²⁰ Anusha Ravi Sood, *'Amidst ongoing Hijab row, 'murder' of Bajrang Dal activist creates further tension in Karnataka'*, *The Print* (21 February 2022) < <https://theprint.in/india/amidst-ongoing-hijab-row-murder-of-bajrang-dal-activist-creates-further-tension-in-karnataka/840185> > accessed 9 March 2022

public lynching of alleged kidnappers²¹ or beef eaters²² is of serious repercussions if not kept under check by the government as the citizenry will lose the faith in the judiciary and legislature, would lead to a state of utter lawlessness and instability.²³

3.2 Unanimous Prejudice as binding force for Collective Violence

The mob carrying out collective violence is said to have a unanimous prejudice with a *culturally homogenous, intimate and interdependent outlook*²⁴. The strong partisanship among the mob is generally backed by likeminded outside groups which hold the same biased view.²⁵ The recent case of protest against the newly enacted farm laws²⁶ illustrated that rapes, murders, instances of grievous hurt etc. were carried out in addition to the protestors being allegedly paid; to carry out a planned campaign against the elected government with an eye to gain political mileage.²⁷ Likewise the, "Protests against Citizenship Amendment Act, 2019 across India were funded by the Islamist group Popular Front of India; the Enforcement Directorate lamentably informed the Ministry of Home Affairs in its report."²⁸ Additionally, the efforts of the administration to sojourn these acts of alleged nuisances were also confronted with weapons resounding mob present at these sites²⁹. Through these activities, the masterminds of the protest provoked the ill-informed and misinformed mob to carry out violence against humanity in general and the state in particular. In both the instances, the mob was being reinforced by vested interest groups from outside which provided intellectual and logistic support to the mob due to shared beliefs and prejudices. The history of protests in India indicates that the political leaders

²¹ 'India's Supreme Court warns of 'mobocracy,' urges government to pass anti-lynching law after deadly attacks', *The Washington Post*, (July 17, 2018); https://www.washingtonpost.com/world/asia_pacific/mobocracy-cannot-be-permitted-indias-supreme-court-cracks-down-on-social-media-fueled-lynchings/2018/07/17/f50d89a3-b198-4830-9f7f4823f8127f0a_story.html

²² 'Will Modi stop India's cow terrorists from killing Muslims?', *The Washington Post*, (July 25, 2018); < <https://www.washingtonpost.com/news/global-opinions/wp/2018/07/24/will-modi-stop-indias-cow-terrorists-from-killing-muslims/> >

²³ Shrashti Jain, 'When Judiciary Forfeits the Trust of the Citizenry' (2020) 1 HNLU SBJ 5

²⁴ Robert Senechal de la Roche, 'Why is Collective Violence Collective?', 19 SAGE J. 126(2001), < <https://journals.sagepub.com/doi/10.1111/0735-2751.00133/> >

²⁵ *ibid*

²⁶ The Farmers' Produce Trade And Commerce (Promotion And Facilitation) Act, 2020

²⁷ Jinit Jain, 'Riots, rapes, murders and loss of over Rs 60,000 crores: What farmers' protests will take with itself if it ends tomorrow', *OpIndia* (30 November 2021) < <https://www.opindia.com/2021/11/riots-rapes-murders-loss-60000-crores-fallout-of-farmers-protest/> > accessed 8 March 2022

²⁸ Neeta Sharma, 'Popular Front Of India Funded Anti-CAA Protests: Probe Agency To Centre', *NDTV* (20 February 2020) < www.ndtv.com/india-news/pfi-popular-front-of-india-funded-anti-kaa-protests-ed-to-mha-2183376/ > accessed 8 March 2022

²⁹ Divyanshu Dutta Roy, 'Sword-Carrying Man, 43 Others Arrested From Farmers' Protest Site', *NDTV* (30 January 2021) < <https://www.ndtv.com/india-news/44-including-man-who-attacked-police-officer-with-sword-arrested-for-violence-at-delhi-haryana-border-2360217/> > accessed 8 March 2022

take a back seat and instigate their political puppets to resort to violence by strategically misleading and manipulating the gullible masses.

3.3 Violation of Individual Freedom in the wake of Majoritarianism

It is a common practice in a democratic nation everywhere that the elected representatives of the people succumb to the genuine demands of the minority groups to accommodate the diverse voices and address an issue. The right to protest is noteworthy in a democracy, where decisions appear to be undemocratic, or against human rights, efforts to get your voice heard, is the essence so that the policies may be reconsidered or taken back. The most effective way of doing this is probably through peaceful protests but a clear demarcation between the acts of protest and the mobocratic sectarian violence is a must, as the parliament should not be allowed to succumb to the whips and fancies of frenzy mob as it raises questions on the democracy itself. What kind of a democracy would it be where a violent mob can get away after challenging the institutions of the State? Someone's right to protest, can in no case be the permissible if it leads to the infringement of other people's fundamental rights, as was the case with the year-long anti-farm law protests where the local residents were made to suffer for a year due to blockade of roads and other activities.

Furthermore, during the aforementioned protests, the unruly masses illustrated the evils of majoritarianism by resorting to violence at an unprecedented scale; which challenged the previous notions of right to protest and the incident that took place on 26th January, 2021 shook the consciousness of the society and put a question mark not only on the sovereignty and integrity of the country, but also the optimism conferred upon the wisdom of the democratically elected government of the nation. On the said day, the protestors of the on-going protest did not follow the prearranged route and broke the barricades to enter Delhi, clashed with police personnel, vandalised property in several parts of the national capital during the farmers' tractor rally. They also entered the Red Fort and unfurled a religious flag in place of the tri-colour from its ramparts³⁰. These acts of violence accompanied by numerous other acts of sectarian violence, forced the Government to withdraw the newly enacted laws on farm reforms thereby, illustrating how democracy can be crumpled to make way for mobocracy using the apparatuses and freedoms guaranteed by the same democratic institutions.

³⁰ 'Delhi Police arrests two more persons in Jan 26 Red Fort violence case', *Business Standard* (New Delhi, March 10, 2021) < https://www.business-standard.com/article/current-affairs/delhi-police-arrests-two-more-persons-in-jan-26-red-fort-violence-case-121031000570_1.html/ > accessed 9 March 2022

3.4 Rumour as a tool in the hands of extremist groups

Rumours have a direct bearing on the acts of mob violence as it is the most preferred tool to instigate the mob and fume violence, especially in the era of internet revolution. The recent political landscape of India illustrates a number of organisations that do not enjoy the confidence of the people in power are becoming intolerant against the policies of the government which do not resemble their narrative. As an outcome, the extremist groups are creating new nuisance by the day. During the anti-CAA (Citizenship Amendment Act, 2019) protests, the nation witnessed how women and children were being used as a shield to legitimise the aftershocks of the episodes of mob violence (Delhi Riots 2020) that took place in the national capital and claimed lives of numerous people during the prolongation of these protests³¹. In addition, autonomous groups of activists backed by several political parties have invented a new form of propaganda mechanism in the form of toolkit to accomplish their agendas and conspiracies³². Consequently, laws enacted in the parliament cannot be upheld or withdrawn because of a frenzy mob that takes up to the streets. The practice of dictating terms to the government from the streets or through the Khap Panchayats or other such social or religious institutions are swelling at an enormous pace and are suggestive of trends against the spirit of democracy and are indicative of dangerous impulses of mobocratic practices to follow.

4. Mob Violence and Vigilantism in India: Statistical Analysis

To understand the brutality and rise in acts of mobocracy, an analysis through numbers is essential. The National Crime Records Bureau does not collect data specifically for mob lynching or cow vigilantism and therefore official/government data under the head of mob violence or mobocracy is not available at present. Due to the lack of any specific law, offences or acts done by the mob are mainly register under the head of Offences against Public Tranquility i.e. under the head of:

- a. Unlawful Assembly Sec 143, 144 & 145 of the Indian Penal Code, 1860.
- b. Rioting (includes rioting on the ground of religion, race & place of birth) Sec 147 - 151, 153 & 153A of the Indian Penal Code, 1860.

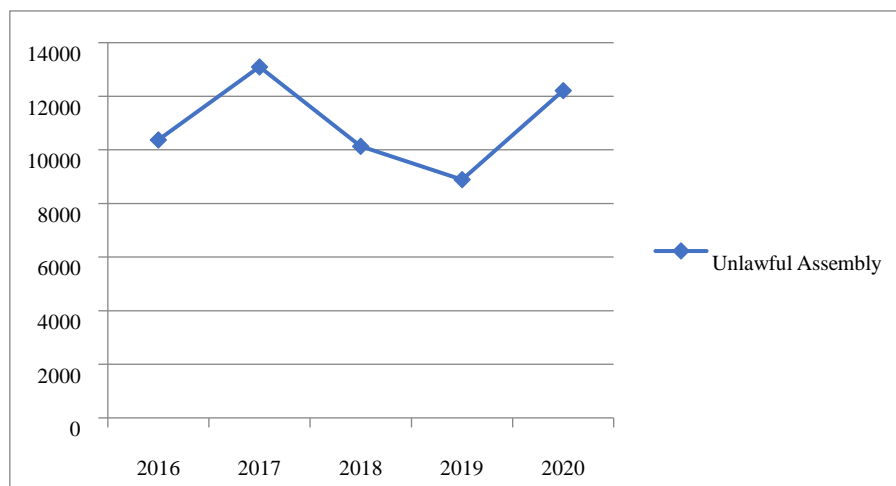
³¹ Bilal Kuchey, 'Fresh violence erupts in Indian capital during anti-CAA protests', *ALJAZEERA* (New Delhi, 24 February 2020) < <https://www.aljazeera.com/news/2020/2/24/fresh-violence-erupts-in-indian-capital-during-anti-cao-protests/> > accessed 9 March 2022

³² 'COVID-19: Row After Top BJP Leaders Tweet a Protest 'Toolkit' by Congress', *THE WIRE* (New Delhi, 18 May 2021) < <https://thewire.in/politics/covid-19-row-after-top-bjp-leaders-tweet-a-protest-toolkit-by-congress/> > accessed 9 March 2022

- c. Offences Promoting Enmity between Different Groups Sec 153A & 153B of the Indian Penal Code, 1860, which deals with broadcasting of irresponsible and explosive messages and violence in various social media platforms, which could have a possible element to inspire lynching or violence.

In the annual publication ‘Crime in India’ by The National Crime Records Bureau (till the year 2016) rioting was apportioned into agrarian, caste conflict, political, communal, students, sectarian, industrial and other rioting. For the purpose of mob violence we are concerned with the data of cases registered under political and communal/religious rioting. Moreover, offences promoting enmity between different groups are divided into subsequent heads: On ground of religion, race & place of birth and imputation, assertions prejudicial to national integration. Following graphs represents the data for the same between the years 2016 to 2020.

Graph 1: Number of cases registered under Unlawful Assembly in India



Source: National Crime Records Bureau

Note: Clarifications on data are pending from West Bengal, Assam, Arunachal Pradesh, Meghalaya & Sikkim

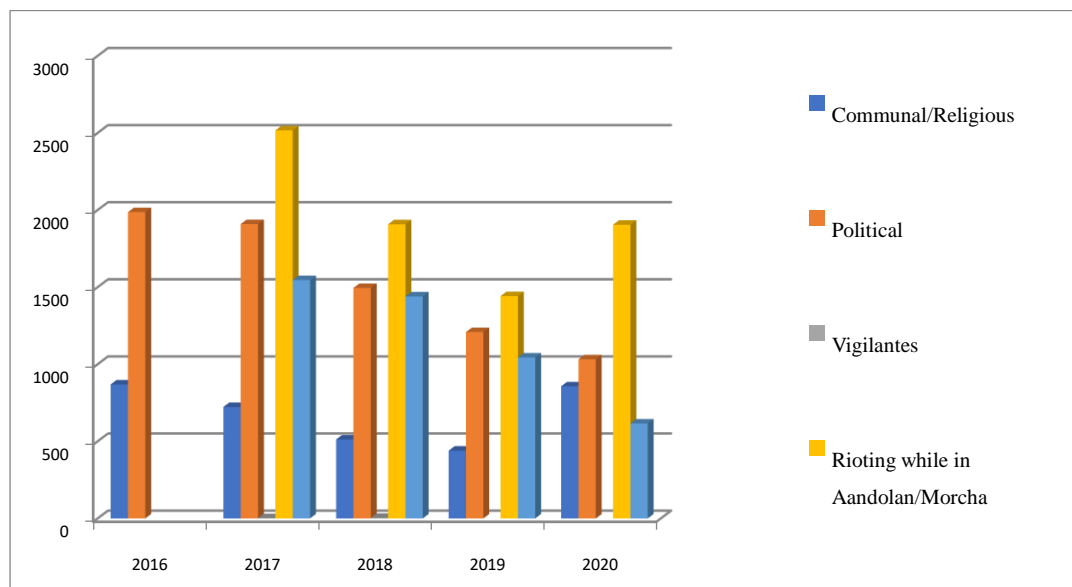
Inference: The graph demonstrates that the number of cases under the category of unlawful assembly reached the peak in 2017 and thereafter, saw a dip till the year 2019 and then indicates a reversal in trend to reach somewhat the same level marking the high in 2020.

Recent Incidents of Mob Lynching: The lynching of 26 year boy named Harsh following the

Hijab controversy in Karnataka on February 21, 2022.³³ The lynching of Sushil Giri Maharaj aged 35 years, Nilesh Telgane aged 35 years and Maharaj Kalpavrikshgiri aged 70 years took place by a mob on April 18, 2020, on the basis of rumours³⁴. During the protest against farm laws on October 15, 2021, one Lakhbir Singh, a 35-year-old man was found hanging with a chopped left hand to an inverted police barricade at the Haryana-Delhi Singhu border outside of Delhi.³⁵

Unlawful Assembly is pre-requisite for any kind of mobocratic violence. The above list of cases of lynching takes into account incidents of violence against both the majority and the minority communities, thereby, lynching is a crime against humanity; it cannot be justified in any form. Moreover, it cannot be narrowed down to the atrocities against a specific community.

Graph 2: Number of cases registered under rioting in India



Source: National Crime Records Bureau

³³ Iti Agarwal, ‘Hijab Row Murder Bajrang Dal worker who wrote post against Hijab was stabbed to death’, *Sudarshan News* (21 February 2022) < <https://www.sudarshannews.in/Hijab-Row-Murder-Bajrang-Dal-worker-who-wrote-post-against-Hijab-was-stabbed-to-death-54519-newsdetails.aspx> > accessed 9 March 2022

³⁴ K A Y Dodhiya, ‘Palghar lynching: PIL seeks action against cops, compensation for victim’ *Hindustan Times* (Mumbai, 22 April 2020) < <https://www.hindustantimes.com/mumbai-news/palghar-lynching-pil-seeks-action-against-cops-compensation-for-victim/story-GU9ePAjPQNY9J5u0f6bf5N> > accessed 9 March 2022

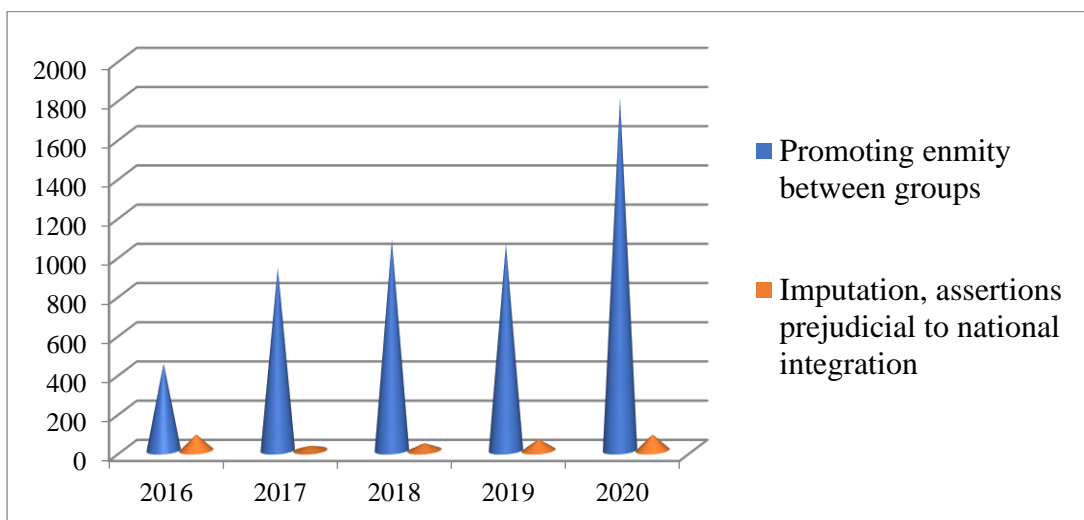
²²Sri Lasya, ‘Who are Nihangs, the group behind Lakhbir Singh's chilling murder at Singhu border? Explained in 5 points’ *India TV* (New Delhi, 17 December, 2021) < <https://www.indiatvnews.com/news/india/who-are-nihangs-sikhs-singhu-border-farmer-protests-lakhbir-singh-murder-explained-in-points-latest-updates-740530/>>

Note: Due to non-receipt of data from West Bengal in time for 2019, Data furnished for 2018 has been used.³⁶

From Graph 2 above, the following may be inferred:

- a. The average number of serious injuries in each incident was between one and four. Thus, almost all cow related violence incidents were targeted at individuals or a small group. Minor injuries have not been included as they were mostly collateral damage and the victims were generally relatives or policemen trying to control the situation. Hence, they cannot be considered targeted victims. Moreover, the number of incidents and serious injuries both significantly dropped in 2018, indicating a fall in the number of incidents of mob violence.
- b. But in 2017, new sub-heads to rioting were added to the general category of rioting namely, vigilantism and rioting while in andolan/morcha, rioting/attacks on police personnel or government servants while in protests; which indicated steady increase in rioting while in andolan/morcha from 2017.
- c. Incidents of attacks on police personnel and government servants showed sudden rise in 2017, but gradually dropping in years to follow.

Graph 3: Number of cases registered under Offences promoting enmity between different groups in India



Source: National Crime Records Bureau

- 1) The levels of intolerance rose; as enmity between the communities significantly rose.

³⁶ National Crime Records Bureau, *Crime in India* (67th Edition, Volume I, 2019)

- 2) The cases of imputation and assertions prejudicial to national integration are constant and miniscule.

The growing cases of violence and attacks on government officials depict the growing roots of mobocracy in the nation. The machinery of government derives its authority by virtue of Article 51A (a), (e) and (i) of the Constitution of India, 1950, as it is the fundamental duty of each and every citizen to abide by the law and to promote harmony and the spirit of common brotherhood amongst all the people of India, in addition to safeguarding public property and abjure violence. Violation of these provisions is an outcome of laxity on the part of political willingness to deal with the issue of mobocracy.

5. Recent legal developments to tackle Mobocracy and Lynching

The landmark judgement of *Tehseen Poonawalla v. Union of India*³⁷ called for legislation against the increasing acts of vigilantism and lynching in the nation. Following which the **Manipur** government was quick to respond and came up with the first Bill against lynching in 2018. The Bill made provisions for nodal officers in each district to control such crimes. Furthermore, failure on the part of police officials to prevent the crime of lynching in their jurisdiction would attract imprisonment for a term that may extend from one to three years with a fine limit of ₹50,000. Additionally, no concurrence of the State government is required to prosecute them for dereliction of duty.

It devolves upon the State to protect victims of mob violence and witnesses from any inducement or coercion apart from initiating schemes for rehabilitation and setting up relief camps where a community is displaced. The law provides for adequate monetary compensation to the victims or their immediate kin.

The **Rajasthan** government too passed a bill against lynching in August 2019; post 2014, 86% incidents of mob lynching reported in the country took place in Rajasthan³⁸. The state government accepted a few of the guidelines issued in the aforementioned case but preferred silence on fixing accountability of police officials in case of dereliction of duty.

³⁷ (2018) 9 SCC 501

³⁸ 'Rajasthan Assembly passes anti lynching Bill', *THE HINDU* (05 August 2019) <
<https://www.thehindu.com/news/national/rajasthan-assembly-passes-anti-mob-lynching-bill/article28823205.ece/> > accessed 9 March 2022

West Bengal came up with a more stringent Bill against lynching and prescribed punishment for lynching to extend up to the penalty of death or imprisonment for life and a fine of up to ₹5 lakh rupees.

While espousing these guidelines, the state should also incorporate provisions for punishment of doctors and medical staff, who stand accused of dereliction of duty, for delay in attending to victims of lynching, or submitting false reports without carrying out a proper and thorough medical examination of the victims, either under coercion by the police or due to their own prejudice against a specific community or religion of the victims. Under the compensation scheme for the victims, the amount to be paid to the victims should be recovered from the perpetrators of the crime or collective fines be imposed on the persons responsible for the act of violence.

While framing the provision of compensation, the legislators should follow the guidelines specified by the Supreme Court in the case of *Kodungallur Film Society v. Union of India*³⁹,

“...that nobody has the right to become a self-appointed guardian of law and forcibly administer his/her own interpretation of the law on others, especially not with violent means. Destruction of public and private property remains as a threat to the society. Those who destroy public property should face the law without any fail. As a citizen of India, safeguarding public property and abjuring violence is one of the fundamental duties which create a sense of responsibility among citizens towards their country.”

Furthermore, the properties of the perpetrators should also be attached for the purpose of payment of victim compensation.

Recommendation to espouse a Central Legislation

The Central government should come up with a pan India legislation to curtail the incidents of mobocracy and also provide for stringent punitive actions against any person be it political leaders or any other religious or sectarian leader along with government officials found guilty of inciting the mob or aiding or felicitating the acts of mob violence. Unless and until a zero-tolerance attitude is adopted in dealing with mob lynching, the events of mob lynching would continue to rise. Punitive action to be taken against police officers accused of dereliction of

³⁹ Writ Petition (Civil No.) 330 of 2018

duty, as incorporated in the law enacted by Manipur government, could be replicated in the Central law too; as it would deter police officials from acting in a partisan manner in favour of the lynching mob.

6. Conclusion: State as a custodian of law and order

The democratic societies worldwide have an extensive history of putting critics in confinement, silencing dissent, passing bills without debate, disallowing inter-religious marriages, using majoritarian tactics and the evil play of the religion card by the government for appeasement and vote bank politics. However, despite that any form of mobocratic practices can never be justified and the government should not be reluctant in invoking penal actions through the law enforcement agencies and the criminal justice system against such acts which propagate misinformation, mislead masses under the umbrella of freedom of speech and expression. Furthermore, devising a Central legislation and its effective implementation is the need of the hour as the cases of mob violence are rising in India at an alarming pace.