

## Urgent Call: Exploring Alternative Penal Approaches for Combating Hate Crimes

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**Abstract:** Hate crimes, encompassing various forms of prejudice and discrimination based on factors like religion, caste, ethnicity, gender, and regional bias, not only exhibit violence but also undermine societal foundations. These acts are more common in diverse societies like India. The prevalence of "mob lynching" in India has brought the concept of "hate crime" to the forefront, prompting the nation's highest court to categorize it as such.

This paper examines "mob lynching" through a criminological lens, advocating for specific crime control, penal policy, and monitoring approaches. It analyses the rising incidence of hate crimes in India, explores the definition of "hate crime," and delves into the criminology of mob lynching, emphasizing the factors contributing to such acts. Part I examines the growing incidence of hate crimes in India. The second part, explains research methodology incorporated. Part III examines the issue of defining hate crimes. Part IV of the article offers a succinct examination of lynching by mob criminology, with a special emphasis on the attributes that lead to hate crimes. Part V of the article analyses the current legal structure for hate crimes. The final part suggests an alternative strategy for approaching criminal justice, which entails enhancing penalties and establishing a governmental oversight body.

**Keywords:** hate crimes; mob-lynching; mob-violence

### Introduction

Instances of hate crimes, such as acts of "mob violence" along with "mob lynching," have lately gained public attention. Individuals of many age groups, including both young and old individuals, fell prey to these instances of mob violence, leading to physical harm, brutal attacks, and casualties of unarmed individuals. As to Zoya Hasan's (2017) statement, the victims of these attacks were profoundly traumatized by the events and therefore started relocating from the regions most affected by hate crimes to other areas. In the past, politically driven hate speech has been substituted by unregulated social media platforms that are abundant in intolerant and hate

speech. Electronic and social media networks are facilitating the dissemination of hate based on individuals' religious systems, racial or ethnic backgrounds and places of birth. Certain individuals disseminate hate speech utilizing social media and technology platforms such as WhatsApp, Telegram, Instagram, and others. Hostility, suspicion, anger, retaliation and reprisal are slowly destroying the enduring social cohesion. The hostile sociocultural atmosphere characterized by animosity is causing the deterioration of social connections among various populations.<sup>1</sup> Regrettably, law enforcement is inadequately addressing those who propagate hate speech rooted in their socio-religious beliefs. Ultimately, official authorities either disregard the matter entirely or limit themselves to condemning and attributing blame. Lynching is often seen as a routine transgression that takes place when there is a frequent disrespect for law and order. There have been cases when law enforcement officials were found supporting the criminals. In the case of *Tehseen S. Poonawalla v. Union of India*, (Writ Petition (Civil) No. 754 of 2016), the Supreme Court of India acknowledged the ongoing and horrifying incidents of lynching in certain parts of the country. As a result, the court directed both the central and state governments to enact legislation and formulate policies to tackle this issue. The Bench, presided over by the former Chief Justice of India, articulated the basic objectives of law and underscored that its principal purpose is to establish a well-ordered society where citizens may pursue their aspirations for progress and transformation, while also providing individuals with the freedom to express their own desires. Although people have the ability to follow their own goals within the boundaries of the law, they are also obligated to abide by the laws. The observation asserts that the citizen aspires for change and advancement, viewing the rule of law as a method to achieve an organized society. It also emphasizes that the most essential right of every citizen, irrespective of their faith, ethnic background, gender, or just place of birth, is to appreciate the rights and privileges granted to them by the constitution. The Supreme Court reiterated its commitment to ensuring that every victim's voice is heard and that every criminal faces punishment. In doing so, it sternly warned both the common citizen and the state, admonishing the state's persistent denial of the continuing and appalling incidents of mob-lynching. The Supreme Court emphasized that hate crimes, which result from intolerance, ideological supremacy, and prejudice, should not be permitted, since they might lead to a reign of terror. The Court provided more explanation about this assurance. Allowing entities other than the State or extrajudicial elements to supplant the law or the authority tasked with its enforcement is unacceptable. Regrettably, policymakers either failed to hear or misinterpreted the information, despite its clear and loud source originating from the highest court of India. The media and social media activists consistently promote new propaganda theories to elucidate the suffering of victims by emphasizing their religion, the caste system, or such identity-based vulnerabilities in reaction to every instance of mob lynching.

### Upsurge in Hate Crimes

In 2016-17, the National Human Rights Commission recorded 117 reported cases of minority community members being subjected to harassment or persecution, as stated by Rahat (2019). The NHRC documented a remarkable 33% surge in the number of reported cases of Dalit harassment. As a result, the NHRC saw an increase in the number of instances reported, rising from 505 in 2016–17 to 672 in 2018–19. The NHRC received a total of 2,008 allegations of harassment targeting minorities and Dalits between 2016 and June 15, 2019. Now that we have these data, it is time to verify their accuracy by conducting experiments to answer

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<sup>1</sup> Borah, Upasana. "Mob Lynching or Horde Lynching: A Threat to Rule of Law Along with Recent Supreme Court Guidelines." *Scholars International Journal of Law, Crime and Justice* 3, no. 8 (August 26, 2020): 248–56, assessed on January 6, 2024, <https://doi.org/10.36348/sijlci.2020.v03i08.001>.

certain fundamental concerns. The resolutions to these matters will significantly influence the structure of the criminal justice system. Is it important, primarily, to handle hate crimes distinctively from other categories of crimes? If the answer is affirmative, what may potentially serve as the basis or underpinning for it? Does the offender's opinion of the victim's character influence the magnitude of their punishment? What are the possible factors contributing to the state's lack of action in response to hate crimes? The justifications for advocating a firm position opposing hate crimes seem to be ineffective. The issue of hate violence endures, and the present justice system fails to effectively tackle it. A comprehensive analysis and empirical data are required to address these concerns.

### **Legal Materials and Methods**

This research aims to analyze the currently accepted definitions of hate crimes in India, focusing on the prevalent instances of mob lynching, in order to get a better understanding of the subject. Doctrinal as well as empirical research methodology has been adopted. Additional investigation into the criminology of mob lynching is facilitated with the use of legal principles established by various authors. Finally, the author presents an alternative method to address hate crimes by carefully analyzing the Supreme Court's standards for these types of acts. The primary focus of the text is on theological matters. Through the perspective of "hate crime," this paper seeks to present a criminological analysis of the phenomenon known as "mob lynching." Furthermore, it will bolster the argument for personalized strategies in crime prevention, punitive measures and monitoring.

### **The Controversy Regarding Definition**

The most remarkable feature of this issue in India is the state's refusal to acknowledge the existence of hate crimes and related acts, such as mob lynching. The counterargument to the claim that mob-lynching and other hate crimes are "alien to Indian culture" is based on the premise that Indian society has consistently been characterized by its diversity. Expanding upon this foundation, the governmental entities in charge of upholding law and order handle hate crimes in a similar manner to other forms of criminal activity, disregarding the distinctive characteristics of mob violence. Scholars commonly assume that the word "lynching" emerged in the Americas around the 18th century. Charles Lynch, an owner of land, politician, and revolutionary, set up an unconventional court in Virginia to penalize Loyalists who backed the British during the American Revolutionary War.<sup>2</sup> Many people believe that the term "lynching" is derived from his name. It is essential to examine and scrutinize instances of lynching instead of focus on the etymology of the term. While hate crimes along with mob violence have not been novel occurrences in India, Harsh Mander (2019) suggests that these labels may have originated from other regions. Historian Romila Thapar (2018) provides a comprehensive and vivid account of these acts of savagery in her influential book. Acts of violence against Dalits, transgender individuals, religious or sectarian minorities, and women accused of witchcraft have a lengthy history in Indian history.

### **Hate Crime: Definitional Concerns**

Hate crimes often include acts of violence driven by animosity towards the victim's perceived distinctive attributes, which can include their religion, race, colour, caste, gender, or region of origin. Heidi Hurd and

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<sup>2</sup> "Westmoreland Davis: Virginia Planter-Politician, 1859-1942." *the American Historical Review* 75, no. 4 (April 1, 1970): 1189, assessed on January 12, 2024, <https://doi.org/10.2307/1852390>.

Michael Moor (2004) use the phrase "criminal manifestation of prejudice" to refer to hate crimes.<sup>3</sup> Regarding the issue of punishment, they advocate for personalized strategies tailored to each offender. "According to Professor Heidi (2001), hatred and bias are specific mental states that deserve harsher punishment. This is because hate crimes indicate a significantly greater level of responsibility on the side of the perpetrators, compared to premeditated killings." Phyllis B. Gerstenfeld (2004) defines a hate crime as a criminal act that is driven by the victim's distinctive characteristics, such as their race, national origin, or religion.<sup>4</sup> Hate crime, as defined by C. Petrosino (2003),<sup>5</sup> refers to the act of victimizing minority based on their racial or ethnic heritage by those belonging to the majority. The area of hate crime jurisprudence has been furthered by the contributions of many academics, including Mohamad (2010), Anthony M. Dillof (1997), James B. Jacobs and Kimberly Potter (1998), Fred M. Lawrence (1994), and Barbara Perry (2003). The authors have addressed the requisite normative criteria for the imposition of penalties for hate crimes. The subjects they address include moral difficulties related to punishing convictions in religion and political limits. The challenge of categorizing hate crimes and distinguishing them from other forms of criminal activity is a significant problem within the realm of hate crimes. What sets apart hate crimes committed on the grounds of faith from those motivated by caste, ethnicity, gender, or place of birth? What rationales does criminal law, specifically penal policy, provide to support an adverse reaction to this situation in terms of sentencing? Can a victim of a hate crime possess several identities, including aspects such as faith, caste, gender, and place of birth? When individuals' identities intersect, it gets more challenging for the criminal justice system to ascertain the underlying motivations behind their animosity. It is important to note that hateful and prejudiced crimes are not sporadic occurrences. The victim experiences everyday victimization during the ongoing process. The defining characteristic of a hate crime, as opposed to other types of crimes, is the victim's enduring hostility. The primary issue in the debate around the categorization of hate crimes is the question of whether criminal law should be able to punish an individual's ideas. This is because hate crimes consider the offender's opinions about the perceived identity of the victim. Can a criminal's opinions about the victim's identity influence the harshness of the punishment? In order to be subject to criminal punishment, an action must satisfy two requirements: *actus reus* and *mens rea*. Criminal responsibility is established when a perpetrator commits a violation due to their culpable mental state and the prohibited outcome that arises from their actions. Furthermore, the prescribed portion of the sentence, as mandated by the law yet subject to potential modification by the courts to maintain equity, is the basis for determining the penalty. Proponents of distinct legislation for hate crime perpetrators (Hurd, Heidi M., and Moore, Michael S., 2004) argue that the existing punitive measures are inadequate in addressing hate crimes because they fail to account for the element of "hate or prejudice." Here, they analyze components that are backed by the equality thesis, the expressive theory of punishment, the greater wrongdoing thesis, and the responsibility thesis. An perpetrator motivated by hate media harms not just the victim but also the victim's community, claims the "greater wrongdoing thesis." The perpetrator's behaviour would communicate a clear message to the victim's whole group, indicating that they are vulnerable, easily targeted, and marginalized in society. Building upon the "greater wrongdoing thesis," advocates of the "expressive theory of punishment"

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<sup>3</sup> Lim Ahn Helen, "Book Review: In the Name of Hate: Understanding Hate Crimes," *Criminal Justice Review* 28, no. 1 (May 1, 2003): 168–69, assessed on February 6, 2024, <https://doi.org/10.1177/073401680302800120>.

<sup>4</sup> Reza, "Hate crimes: uses, controls and controversies, by Phyllis S. Gerstenfeld," *Global Crime* 12, no. 4 (November 1, 2011): 327–28, <https://doi.org/10.1080/17440572.2011.616071>.

<sup>5</sup> Jacobs B. James and Potter A. Kimberly, "Hate Crimes: A Critical Perspective," *Crime and Justice* 22 (January 1, 1997): 1–50, assessed on January 6, 2024, <https://doi.org/10.1086/449259>.

suggest imposing more severe penalties to effectively convey society's determination to eliminate prejudice. The "culpability thesis" centers on an offender's morally condemnable mental state, arguing that hate crimes are considered more morally despicable than non-violent crimes. Hate or prejudice as an ingredient distinguishes hate crimes from regular crimes, even though both need *mens rea*. Ultimately, the equality thesis asserts that hate crime enhancements and specific laws are necessary to establish equality among different social groups, castes, or faiths. One method of ensuring equitable distribution of the "state-produced good" might be via the implementation of hate crime laws. The core of the definitional disagreement lies in the act of punishing the offender for his "mere belief". Penalties should only be imposed on those who engage in illegal activities while possessing a certain culpable mental condition. An often-raised criticism of hate crime legislation is that they involve making moral assessments about individuals' identities, which some argue should not be subject to legal punishment. The author contends that making moral evaluations based on the identity of victims is not fundamental to the main problem being discussed. The issue at hand relates primarily to the fundamental existence of the individual affected or their group. The rule of law as well as the constitutional framework are at risk when the survival of the victim or their community is in danger. In the case of *Tehseen S. Poonawalla* (*supra*), the Supreme Court expressed that hate crimes stemming from intolerance, prevailing ideology, and prejudice should not be accepted, since they might lead to a state of widespread fear and violence. This indicates their overall attitude. Thus, the argument for more severe penalties is established. Improved An analysis of punishment and its application within the framework of the Indian Penal Code. Upon close scrutiny of the Indian Penal law, 1860 (hereafter referred to as the IPC), it becomes evident that the notion of increased misconduct, accountability thesis, or expressive theory is prominently included throughout the law. The culpability thesis is appropriately shown by the connection between punishment and culpability as outlined in Section 299, in conjunction with Section 300 of the IPC, for the same *actus reus*. The larger wrongdoing thesis may be explained by referencing Sections 153A, 153B, etc. of the IPC. The "expressive theory of punishment" may be used to justify the lenient sentences given for crimes such as dowry killing under Section 304-B of the Indian Penal Code or rape under Sections 367, 376A, 376C, 367D, 376E, 367AB, 367DA, and 376DB of the Code. Due to their nature of expressing disapproval for specific offenses, these clauses are subject to different sentencing requirements than usual, giving the court the authority to choose the sentence.

### **III. Analyzing Recent Crimes in India Within the Context of Established Principles of Customary International Law Pertaining to Crimes Against Humanity**

As to the Rome Statute, crimes against humanity are described in Article 7 as a series of prohibited actions conducted within the framework of a widespread or systematic attack on any civilian population, with the intention of implementing an official state or organizational policy. This study investigates whether or not the events in India satisfy the criteria outlined by the contextual elements of Article 7, that acts as a standard for the circumstances under customary law. It follows the current approach of the International Law Commission. The article mostly relies on quantitative data from independently-funded think tanks, both inside and outside of India, to analyse hate crimes. This approach is used due to the underreporting and biased coverage of hate crimes in India's mainstream media. The anti-government positions and research revelations of some of these organizations have unsurprisingly attracted criticism.<sup>6</sup> For the purpose of this study, it is assumed that all

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<sup>6</sup> Amnesty International. "Amnesty International India halts its work on upholding human rights in India due to reprisal from Government of India," assessed August 8, 2022, <https://www.amnesty.org/en/latest/press-release/2020/09/amnesty-international-india-halts-its-work-on-upholding-human-rights-in-india-due-to-reprisal-from-government-of-india/>.



relevant actions were carried out with the required level of intention and understanding.

## **Assault on a Non-Military Population**

### **Traditional Law**

According to Article 7(2)(a) of the Rome Statute, attainment is characterized as a series of activities, as outlined in Article 7(1), that constitute crimes against humanity. This aligns with the idea of ad hoc tribunals, which said that a repeated pattern of action or, in certain situations, a single event including a significant number of acts of victimization, might meet the necessary criteria. If the actions committed by a person may be classified as crimes against humanity, it is not necessary for the attack to be military in character or fulfil any other special requirements.<sup>7</sup> For example, national courts have established that actions that might demonstrate the occurrence of an attack include the obstruction of access to food and water<sup>8</sup>, extensive forced removal of individuals, and imprisonment. The Rome Statute does not include a specific definition for the term "civilian population," nonetheless, based on 114 instances, it has been established that this term encompasses those who are not engaged in hostilities.<sup>9</sup>

### **Relevance to Indian Events**

The incidence of murder, sexual assault, as well as other violent crimes has been increasing in India. These acts undoubtedly qualify as fundamental crimes against humanity. Acts of property destruction, restriction on beef intake, institutionalized bias by the police, and loss of income are all instances of oppressive actions that may be associated with the violation of fundamental rights. All of these atrocities, save for one lynching in Jammu and Kashmir, took place during peaceful periods and targeted civilians as victims.

### **Pervasive or organized.**

### **Traditional Law**

As stated in Article 7(1) of the Rome Statute, an attack on civilian populations must meet the criteria of being either "systematic" or "widespread." The activities of the ad hoc tribunals support the notion that achieving both the conditions is unnecessary.<sup>10</sup> During the drafting of the Statute, several delegations, including India,<sup>11</sup> expressed concerns with this approach. Nevertheless, their worries were alleviated when it was realized that the precise interpretations of "attack" as well as "State or organizational policies" would prohibit a compilation of

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<sup>7</sup> "Rome Statute," Wikipedia, assessed 19, 2024, [https://en.wikipedia.org/wiki/Rome\\_Statute](https://en.wikipedia.org/wiki/Rome_Statute).

<sup>8</sup> "Kunarac et al. (IT-96-23 & 23/1) | International Criminal Tribunal for the former Yugoslavia," n.d. assessed August 12, 2022, <https://www.icty.org/en/case/kunarac>.

<sup>9</sup> "Blaskic case-Appeals Chamber Judgement, 29 July 2004," n.d., assessed on January 6, 2024, <https://www.ict.org/x/cases/blaskic/acjug/en/>.

<sup>10</sup> Jalloh, Charles C. "International Decision: Situation in the Republic of Kenya No. ICC-01/09-19: Decision on the Authorization..." *ResearchGate*, August 17, 2011, assessed December 13, 2023, [https://www.researchgate.net/publication/228150878\\_International\\_Decision\\_Situation\\_in\\_the\\_Republic\\_of\\_Kenya\\_No\\_ICC-0109-19\\_Decision\\_on\\_the\\_Authorization\\_of\\_an\\_Investigation](https://www.researchgate.net/publication/228150878_International_Decision_Situation_in_the_Republic_of_Kenya_No_ICC-0109-19_Decision_on_the_Authorization_of_an_Investigation).

<sup>11</sup> Rome Conference Official Records, United Nations. (n.d.), accessed June 24, 2024, <https://legal.un.org/icc/rome/proceedings/contents.htm>.

arbitrary or isolated actions from being categorized as a crime against humanity. There is currently no widely accepted method, either quantitative or qualitative, for definitively assessing if the "widespread" requirement has been fulfilled.<sup>12</sup> However, it is commonly believed to indicate a large-scale occurrence. The appraisal is determined by the individual circumstances of each instance. Courts have declined to adjudicate a wide-ranging attack when the total number of victims is insufficient, but generally, a significant number of persons must have been harmed for a case to proceed. Crimes that affect a large geographic area may serve as evidence of the required scale, however it is not obligatory.

While the 'systematic' requirement is well recognized, distinguishing it from other ideas, such as 'policy,' has proven to be difficult.<sup>13</sup> The UN Secretary-General stated that systematicity refers to the adoption of a methodical approach in assessing the necessity of an international tribunal to address the violence in Lebanon both before and after the assassination of Prime Minister Rafiq Hariri. Both domestic courts and a few selective international tribunals have concurred with this line of reasoning. The importance of the systematic nature of the acts, including the occurrence of "patterns of crimes" plus the unlikely chance of them happening randomly or unintentionally, is emphasized.

### Relevance to Indian Events

Amnesty International and The Quint identified a total of 938 verified incidences of violence between 2015 and 2019, specifically targeting Muslims and Dalits. Based on recent data from the Delhi riots, hate crimes resulted in the deaths of around 250 Muslims and 650 Dalits, affecting more than 1500 persons.<sup>14</sup> Over the last five years, a total of 134 individuals belonging to the Muslim and Dalit communities<sup>15</sup> have been targeted and subjected to acts of violence throughout in more than 24 states.<sup>16</sup> The data indicates an upward trend in these statistics. It is uncertain if this amount of victimization surpasses the permissible threshold, but it may not be as extreme as some attacks that have been classified as "widespread" in the context of crimes against humanity.<sup>17</sup>

There is data that supports the feasibility of defining criteria that are "systematic". While private people or organizations were the main culprits of criminal acts, it is important to note that these acts of violence were not entirely spontaneous. Before the lynching occurred, some victims reported to the police that the attackers had

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<sup>12</sup> Hall, Christopher Keith. "The First Two Sessions of the Un Preparatory Committee on the Establishment of an International Criminal Court." *American Journal of International Law* 91, no. 1 (January 1, 1997): 177–87, assessed December 18, 2023, <https://doi.org/10.2307/2954159>.

<sup>13</sup> "ICTY, The Prosecutor v. Blaskic | How does law protect in war? - Online casebook," n.d., assessed December 18, 2023, <https://casebook.icrc.org/case-study/icty-prosecutor-v-blaskic>.

<sup>14</sup> Kumar, Alok Prasanna and Alok Prasanna Kumar. "Lynchings Aren't Just Murders. We Need Specific Data on It – & now." *The Quint*, July 25, 2018, assessed January 12, 2024, <https://www.thequint.com/voices/opinion/absence-of-data-on-lynching-modi-government>.

<sup>15</sup> Kaggle. "Amnesty International 'Halt The Hate' Dataset," March 19, 2018, assessed February 10, 2024, <https://www.kaggle.com/datasets/tentotheminus9/amnesty-international-halt-the-hate>.

<sup>16</sup> Kumar. "Lynchings Aren't Just Murders. We Need Specific Data on It – & now." *The Quint*, July 25, 2018, assessed January 14, 2024, <https://www.thequint.com/voices/opinion/absence-of-data-on-lynching-modi-government>.

<sup>17</sup> Times Now. "Public lynching: Chilling acts of violence that shook India," June 26, 2017, assessed March 9, 2024, <https://www.timesnownews.com/india/article/public-lynchings-that-shook-india-a-timeline/64250>.

made threats against them.<sup>18</sup> Likewise, the criminal activities occurred. Witnesses of the riots in Delhi describe how large groups of Hindus used metal rods, crowbars and revolvers as they vandalized Muslim residences, shops and places of worship.<sup>19</sup> Furthermore, it is important to note that there was no absence of governmental power or authority throughout the occurrence of these events. Upon gaining control at the federal level, the BJP almost prohibited the eating of beef nationwide, and states under the party's influence began to strengthen their legislation on cow slaughter.<sup>20</sup> A significant number of Muslims and Dalits relied on beef as a primary source of sustenance<sup>21</sup> and consumed it often owing to its affordability. Therefore, the ban imposed a significant disadvantage on them.<sup>22</sup> The implementation of beef prohibitions resulted in an almost 300 percent increase in hate crimes against Muslims and Dalits. Eighty percent of the individuals involved were found to have direct or indirect affiliations with the Hindu nationalist BJP or one of its associated groups, such as the Vishwa Hindu Parishad, Hindu Yuva Vahini or Bajrang Dal.<sup>23</sup> The enactment of legislation permitting commercial companies to undertake cow protection or state-sponsored rewards programs for cow vigilantes resulted in the proliferation of cow-protectors (also known as gau rakshaks) working on behalf of state governments. State-sponsored reward schemes may include the participation of cow vigilantes.<sup>24</sup>

#### IV. The Crime of Mob Lynching

Research on mob violence has been undertaken by criminology and criminal psychology. Professor Gustave Le Bon elucidated the essential elements of mob violence in his 1896 work titled "The Crowd—A Study of the Popular Mind."<sup>25</sup> According to his narrative, when an individual assimilates into a group, they lose their whole sense of self. The individual's personal life, career, character, and IQ all deteriorate as they assimilate into the collective group. The impact of the "collective consciousness" compels him to undergo feelings, ideas, and actions which would have been unattainable for him alone. According to Michael Welner (2017), engaging with a crowd leads to the suppression of one's usual psychological talents. That's why the behaviour of a mob does not always align with the activities of its individual members. Furthermore, while considering the objective of the spectators, it is entirely superfluous for everyone's purpose to be same. It is quite likely that an individual,

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<sup>18</sup> Bhat Alam M Mohsin, Vidisha Bajaj, and Sanjana Arvind Kumar, "The crime vanishes: Mob lynching, hate crime, and police discretion in India," *Jindal Global Law Review* 11, no. 1 (April 1, 2020): 33–59, <https://doi.org/10.1007/s41020-020-00115-4>.

<sup>19</sup> Ellis-Petersen, Hannah. "Inside Delhi: beaten, lynched and burnt alive." *The Guardian*, March 4, 2020, assessed January 12, 2024, <https://www.theguardian.com/world/2020/mar/01/india-delhi-after-hindu-mob-riot-religious-hatred-nationalists>.

<sup>20</sup> "Gujarat+animal+preservation+2017+act | Indian Case Law | Law," <https://www.casemine.com>, n.d., assessed December 16, 2023, <https://www.casemine.com/search/in/Gujarat+animal+preservation+2017+act>.

<sup>21</sup> S, Rukmini. "The meat of the matter." *The Hindu*, December 4, 2021, assessed January 20, 2024, <https://www.thehindu.com/opinion/blogs/blog-datadelve/article6195921.ece>.

<sup>22</sup> Lukose, Anjali. "At Asia's largest abattoir, butchers fear livelihood loss as beef ban sets in." *The Indian Express*, March 23, 2015, assessed March 10, 2024, <https://indianexpress.com/article/india/india-others/at-asias-largest-abattoir-butchers-fear-livelihood-loss-as-beef-ban-sets-in/>.

<sup>23</sup> Apoorvanand. "What is behind India's epidemic of 'mob lynching'?" *Al Jazeera*, July 6, 2017, assessed January 20, 2024, <https://www.aljazeera.com/opinions/2017/7/6/what-is-behind-indias-epidemic-of-mob-lynching>.

<sup>24</sup> The Indian Express. "Haryana notifies special task force for cow protection, gau rakshaks are its members," July 29, 2021, assessed March 10, 2024, <https://indianexpress.com/article/cities/chandigarh/haryana-notifies-task-force-to-prevent-cow-smuggling-slaughter-7428844/>.

<sup>25</sup> Le Bon Gustave, *The Crowd: A Study of the Popular Mind* (New York: MacMillan, 1896).



motivated by intense animosity, may spontaneously join a crowd and commit a gruesome act of violence against the innocent victim in the wake of hate crimes, especially in cases of mob violence. Individuals from the general population may be involved in violent mob offenses perpetrated by organized criminal syndicates driven by animosity. The Unifying Element in Consortium: Prejudice and animosity Is it crucial to be aware of the demographics or composition of the crowd in order to comprehend mob violence? Therefore, it is not rare for a group of followers of a certain religion to commit acts involving religious violence. Regarding caste violence, the composition of the crowd reveals a contrasting image. In this scenario, previous occurrences suggest that individuals from different castes quickly establish antagonistic victim groups. What motivates individuals with diverse socioeconomic backgrounds to form cohesive organizations, even when they may have contradictory interests? Dr. Wendy James seeks to examine mob behaviour by using three psychological hypotheses in her research titled 'the Psychology of Mob mindset and Violence.' The ideas included in this set include the Convergence Theory, the Contagion Principle, as well as the Emergent-Norm Theory.<sup>26</sup> The Convergence theory states that the aggressive behaviour of a mob is separate and different from the behaviour of the people who form the mob. When people become part of a crowd, they have a tendency to imitate the conduct of the majority. The crowd itself does not inherently generate violence, instead it is the individuals inside the crowd that begin and sustain acts of violence. The concept of contagion establishes a link between the initiation of an act of violence and its subsequent continuation. As to the Contagion Theory, once the violence is abruptly halted, the crowd exerts a hypnotic influence on each individual member. The hypnotic influence causes everybody in the audience to behave in an irrational and emotionally driven manner. The essential characteristics of a crowd are what drive an individual to participate in a mob-like frenzy. The Emergent-Norm Theory posits that mob violence occurs when a cohesive group of individuals, who have strong prejudice and animosity towards the victim, engage in violent behaviour while in a crowd. Dr. Wendy James' perspectives on the psychological aspects of mob mentality are insufficient in explaining the cohesive forces that unite people in cooperation. Based on the author's observations of current events, she deduces that the common factor that unites diverse groups of individuals with varying origins, ages, socioeconomic situations, and jobs is a widespread sense of animosity and bias.<sup>27</sup> A significant factor in this phenomenon is the indoctrination that takes place via social interactions. Professor G.S. Bajpai (2019) describes mob lynching as a common kind of behaviour that occurs when many elements come together. Prof. Bajpai presents many concepts to comprehend the unlawful activities of the lyncher. Professor Bajpai disproves the assertion that all lynchers are psychopaths or sociopaths.<sup>28</sup> A lyncher is someone who, throughout their childhood, witnessed violence as a justifiable and essential response to many issues. He accepts violence as a given, observing it as an unavoidable aspect of existence that emerges whenever necessary. When an individual joins a bigger collective, their distinct identity gets integrated into the collective's overarching identity. Therefore, the collective's subconscious, irrational cognition dominates the individual's conscious, logical cognition, leading to the perpetration of violent acts by the person. Prof. Bajpai argues that mob lynching is primarily caused by de-individualization, which refers to the lack of individual moral guidance in circumstances of mob violence. The subsequently formed mob will be devoid of any personal moral guidance and instead exhibit the "exceptionally aggressive characteristics of each

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<sup>26</sup> Wendy James, "The Psychology of Mob Mentality and Violence," last modified 11 years ago, accessed June 24, 2024, <https://drwendyjames.com/the-psychology-of-mob-mentality-and-violence/>.

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<sup>28</sup> G. S. Bajpai, "Criminology of Mob Lynching," *The Tribune*, July 16, 2019, available at SSRN: accessed June 20, 2024, <https://ssrn.com/abstract=3420607>.

member of the collective, their irrational sense of superiority, their fragile susceptibility, and the alarming sense of recklessness that stems from their misguided belief in invincibility." As stated by Prof. Bajpai, it is crucial for law to tackle "those aspects that arise from human instinct and behaviour." We propose that the state has to tackle the indoctrination occurring at many levels in order to effectively fight mob violence, rather than relying just on criminal legislation.<sup>29</sup>

## V. Hate Crime: The Legal Regime

The Indian Penal Code (IPC) provides explicit provisions to deal with mob violence. The Indian Penal Code (IPC) has specific provisions for the punishment of hate crimes, apart from the broad provisions related to unauthorized assembly, rioting and affray. Section 153A of the Indian Penal Code criminalizes the act of inciting hate among different groups based on religion, race, ethnicity, place of residence, language, or any other category.<sup>30</sup> Similarly, section 153-B also criminalizes the act of publishing or making any charge that obstructs national cohesiveness.<sup>31</sup> Section 295 of the Indian Penal Code prohibits the act of damaging or desecrating any place of worship in order to prevent the possibility of upsetting any specific religious group. Section 295A of the Indian Penal Code strictly prohibits any deliberate and malevolent acts aimed at causing offense to any religious community.<sup>32</sup> Section 296 of the Indian Penal Code explicitly declares that intentionally disturbing a lawfully assembled religious congregation is a criminal offense.<sup>33</sup> Trespassing on burial sites is forbidden under Section 297 of the IIPC in order to uphold the respect for people's religious beliefs. Engaging in speech with the intention of causing offense to religious beliefs is prohibited according to Section 298.<sup>34</sup> The Protection of Civil Rights Act of 1955 provided legal safeguards for those belonging to a socially recognized "untouchable" caste.<sup>35</sup>

### What distinguishes lynching as a graver offense compared to murder?

Legislation prohibiting hate crimes is opposed by those who believe it to be purely political in nature. They would put forward evidence to substantiate their assertion that lynching, the most egregious kind of hate crime, is tantamount to homicide according to the Indian Penal Code of 1860 therefore may be subject to appropriate legal penalties. It is claimed that the process of thinking tends to oversimplify the facts. The criminal rules that are effective for conventional crimes are not applicable for prosecuting hate crimes due to their distinct origins

<sup>29</sup> G. S. Bajpai, "Criminology of Mob Lynching," *The Tribune*, July 16, 2019, available at SSRN: accessed June 20, 2024, <https://ssrn.com/abstract=3420607>.

<sup>30</sup> Mahawar, Sneha. "Hate speech in India: an analysis in light of Section 153A and 295A of IPC - iPleaders." iPleaders, September 27, 2021, assessed December 13, 2023, <https://blog.ipleaders.in/hate-speech-india-analysis-light-section-153a-295a-ipc/>.

<sup>31</sup> Garg, Rachit. "Hate speech in India - iPleaders." iPleaders, March 30, 2021, assessed March 24, 2024, <https://blog.ipleaders.in/hate-speech-india/>.

<sup>32</sup> A Lawyers Reference. "IPC Section 295A - Deliberate and malicious acts intended to outrage religious feelings of any class by insulting its religion or religious beliefs," n.d. assessed March 24, 2024, <https://devgan.in/ipc/section/295A/>.

<sup>33</sup> Raj Keshab, Kumar Vivek. "Disturbing Religious Assembly 6, no. 1 (June 6, 2023): 1366-77, assessed December 18, 2023, <https://doi.org/10.1000/IJLMH.114199>.

<sup>34</sup> "Offences Relating to Religion: Section 295A," n.d. assessed March 24, 2024, <https://www.legalserviceindia.com/legal/article-9993-offences-relating-to-religion-section-295a.html>.

<sup>35</sup> Centre for Law & Policy Research. "Caste discrimination Archives - Centre for Law & Policy Research," n.d. assessed March 28, 2024. <https://clpr.org.in/tag/caste-discrimination/>.

that differ from other kinds of crimes.<sup>36</sup> The idea gains credibility from the low percentage of convictions in cases of communal/caste violence. According to data provided by the Ministry of Home Affairs, the overall conviction percentage as per the SC/ST (Prevention of Atrocities) Act is much lower at 16.3% compared to the national average of 29.4%. Due to this rationale, the Ministry of Home Affairs issued a directive directing all states to carry out comprehensive investigations into crimes related to Scheduled Castes/Scheduled Tribes.<sup>37</sup> Despite the increasing prevalence of hate crimes, including mob violence, these provisions did not have any noticeable impact. As a result, in 2005, legislators proposed Communal Violence Bill. This legislation proposed more severe sanctions for acts of violence or riots inspired by religion, and it had numerous very stringent clauses. However, there was not enough backing in the legislative chamber for the proposed legislation. It received more improvements in 2012, however was later abandoned.

### Diverse Legal Frameworks

In response to a series of lynchings occurring in various regions of the nation, the Supreme Court of India denounced hate crimes as a consequence of intolerance, prevailing ideology, and prejudice. The court also mandated the government to formulate a comprehensive plan to effectively address and counteract such crimes. The Supreme Court witnessed the recurring instances of lynching as a direct attack on the principles of the rule of law and the fundamental values enshrined in the Constitution. Consequently, the Court consistently expressed its disapproval of these acts.<sup>38</sup> The pronouncements issued by the supreme court are not only for display. It is essential to acknowledge that the Constitutional founding principles are separate from the beliefs held by the majority, and that a comprehensive strategy is required to safeguard the ideals stated in the constitution. Firstly, the implementation of a novel centralized system to supervise and guide endeavors against hate crimes. Secondly, the enactment of precise legislation to tackle mob violence and offer suitable punitive measures with more severe penalties.

### Desire for Distinctive Legislation

The Supreme Court, in *Krishnamoorthy v. Sivakumar*, [(2015) 3 SCC 467], declared that the law has the highest authority in a civilized society. No individual, whether operating alone or as a member of a rapidly forming mob, has the authority to deem someone else as culpable and administer appropriate punishment. The Supreme Court has recommended that Parliament create a specific offense for lynching and impose appropriate punishments for such crimes. The court referred to mob lynchings as "horrific acts of mobocracy." The Supreme Court provided a mandate to the states, encouraging them to take proactive and responsible measures to ensure effective law enforcement, preserve peace, and protect the unique secular values and diversified social structure.<sup>39</sup> The pronouncements issued by the supreme court are not only for display. Due to the court's comprehension of the gravity of the issue, it mandated certain measures to be implemented within a four-week timeframe after the ruling. Preventive, remedial, and disciplinary measures are all included in the package.

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<sup>36</sup> NAACP. "History of Lynching in America," February 11, 2022. accessed June 20, 2024, <https://naacp.org/find-resources/history-explained/history-lynching-america>.

<sup>37</sup> Abbott, Geoffrey. "Lynching: Definition, History, & Facts." Encyclopaedia Britannica, May 21, 2024. accessed June 20, 2024. <https://www.britannica.com/topic/lynching>.

<sup>38</sup> Legal-Lore. "Tehseen S Poonawalla Vs Union of India." Legal-lore, July 17, 2018. accessed June 20, 2024. <https://www.legallore.info/post/tehseen-s-poonawalla-vs-union-of-india>.

<sup>39</sup> Avinash. "Krishnamoorthy v. Sivakumar & Ors." Supreme Court Cases, December 4, 2021. accessed June 20, 2024. <https://www.supremecourtcases.com/krishnamoorthy-v-sivakumar-ors/>.

As a precautionary step, the court has suggested the appointment of a high-ranking state police official, namely someone at the level of Superintendent of Police, as the Nodal official responsible for each district. The Nodal Officer is responsible for preventing lynchings as well as other instances of mob violence. It is necessary to have frequent discussions among the Nodal Officer, local intelligence, as well as the head of each police station in order to identify any patterns or indications of mob violence.<sup>40</sup> The Nodal Officer is accountable for proactively addressing any hostile environment that discriminates against any group or caste, and for consistently monitoring social media regarding instances of objectionable information dissemination.<sup>41</sup> The Nodal Officers have the responsibility of coordinating with the DGP while working across districts. A state-level special task force will be created to collect intelligence data on hate crimes. The intention is for the federal and state governments to collaborate in a similar manner. The Constitution acknowledges that individual states have the responsibility of upholding law and order. However, it also stipulates that the federal government must provide the necessary guidelines to assist states in addressing the significant issue of hate crimes.

As a remedial step, the Supreme Court has required the filing of First Information Report (FIR) in all incidents of lynching and mob violence. The Nodal Officer is responsible for supervising the investigation into hate crimes. It is essential to uphold the rights of victims throughout the investigation.<sup>42</sup> Furthermore, as mandated by Section 357A of the Criminal Procedure Code, the State Governments must establish a program to provide compensation to victims of lynching or mob violence. Payment for interim assistance must be provided within a period of thirty days after the incident, in accordance with the stipulations of the compensation scheme. States are now being urged to establish specialist courts dedicated to handling issues related to lynching. Additional instructions included the provision of witness protection, the provision of complimentary legal assistance, and, with the exception of extraordinary situations, the imposition of the maximum punishment permissible by law.

The Supreme Court deviated from the norm by imposing harsh fines and asserting that the responsible official must be held legally accountable for any deliberate noncompliance with the aforementioned directives. In the case of *Arumugam Servai v. State of Tamil Nadu*,<sup>43</sup> the court upheld the previous verdict and emphasized that it is the responsibility of the states to take action against officials who engage in misconduct.

## VI. Argument for Enhance Punishment and Federal Monitoring Agency

Once again, acknowledging the existence of the issue is the first stage in finding a solution. The first step in addressing hate crimes is examining the Supreme Court's stance on hate speech, mob lynching, including hate crimes. The Court's planned steps clearly demonstrate the aim of implementing a comprehensive punitive strategy. It addresses the core issue and provides some direction for future progress. The Court asserts the need of recognizing hate crimes, mob violence, including mob lynching. Furthermore, it establishes stringent

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<sup>40</sup> Y. Mittal, "Supreme Court Seeks States' Responses on Steps Taken in Mob Lynching Cases," Live Law, 2024, accessed June 25, 2024. <https://www.livelaw.in/top-stories/supreme-court-seeks-states-responses-on-steps-taken-in-mob-lynching-cases-255229>.

<sup>41</sup> Avinash. "Krishnamoorthy v. Sivakumar & Ors." Supreme Court Cases, December 4, 2021. accessed June 20, 2024, <https://www.supremecourtcases.com/krishnamoorthy-v-sivakumar-ors/>.

<sup>42</sup> Legal-Lore. "Tehseen S Poonawalla Vs Union of India." Legal-lore, July 17, 2018. accessed June 20, 2024. <https://www.legallore.info/post/tehseen-s-poonawalla-vs-union-of-india>.

<sup>43</sup> "Arumugam Servai Vs State of Tamil Nadu." 19 April, 2011. n.d. accessed June 25, 2024. <https://indiankanoon.org/doc/1337458/>.

penalties for those who commit hate crimes and advocates for a prompt legal process, safeguarding of witnesses, and recompense for victims. Furthermore, the court recognized the need for alternative, efficient, and synchronized law enforcement measures at many levels, ranging from the local level to that of the minister of home affairs in the Indian government, in order to enhance crime control.

### **Rationale for Imposing Harsher Sanctions**

The criminal justice system should revise its approach of imposing more severe penalties for hate crimes in compliance with both the Supreme Court's guidance and prior arguments. In accordance to the expressive paradigm of punishment, heightened punishment should convey two meanings simultaneously. We are sending a clear message to all potential wrongdoers that we have zero tolerance for hate crimes and will be imposing heavy punishments for such offenses. Furthermore, we are conveying a message to the victim as well as their community that we are committed to safeguarding all individuals and that it is important to maintain faith in the legal system.

### **The Federal Monitoring Agency**

While it may seem ambitious, hate crimes, which erode constitutional principles and threaten the rule of law, posing a danger to the diverse values of society, need a distinct strategy. An assertive and decisive reaction is needed in instances of hate crime. To achieve this objective, it is possible to create a government organization responsible for monitoring hate crimes.<sup>44</sup> The need for this body to enhance cooperation is clearly established by the Supreme Court's explicit instructions. This agency has the ability to preserve records and confidential information related to hate crimes, as well as facilitate interstate collaboration. Adhering to the principles of cooperative federalism may facilitate the attainment of the objectives outlined in the constitution. Implementing such a mechanism in a society having a centralized bureaucracy that includes both civil administration as well as police would not pose a significant challenge.

### **VII. Concluding Remarks and Suggestions**

Several states have introduced legislation to address the issue of mob lynching in compliance with the orders from the Supreme Court. The UP-Law Commission has adopted a stringent position on the matter in its draft legislation. The UP-draft law proposes more severe penalties for anyone involved in lynching and a three-year imprisonment term for police personnel engaged in corruption.<sup>45</sup> In 2018, the Manipur government also proposed a measure to address the issue of lynching, with several comparable elements. The proposed law contains provisions for the rehabilitation of victims, as well as safeguards for individuals who are witnesses of mob violence. In 2019, the governments of Rajasthan and West Bengal enacted legislation to prohibit mob lynching. However, these regulations only represent a minimal attempt to address hate crimes.

The Indian government aims to demonstrate to minorities their unwelcome status by the commission of horrible crimes against Muslims and Dalits, as well as the court and police's obvious indifference. There have been

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<sup>44</sup> "HCRW | Hate crime reporting," n.d. accessed June 20, 2024. <https://www.legallore.info/post/tehseen-s-poonawalla-vs-union-of-india>. <https://hatecrime.osce.org/odihr-tools>.

<sup>45</sup> Singh, Vijaita. "Antimob-lynching bills passed by four State assemblies at various levels of non-implementation." The Hindu, February 16, 2022. assessed on January 12, 2024, <https://www.thehindu.com/news/national/anti-mob-lynching-bills-passed-by-4-assemblies-at-various-levels-of-non-implementation/article65052872.ece>.



equally brutal campaigns of "othering" on the basis of gender, race, religion, ethnicity, and other characteristics throughout history. Studying previous battles is enlightening because it demonstrates how the legislation on hate crimes may assist in addressing the significant combination of individual and social damage caused by this kind of violence. This paper argues that the current legal structure in India fails to sufficiently deal with hate crimes. Both the Indian Supreme Court and the High Court of Delhi have not developed a comprehensive system to identify and/or bring legal action against hate crimes, notwithstanding their attempts to place crimes that target minority groups within the context of prejudice and institutional bias. As a result, the domestic criminal procedure remains unfinished. Implementing domestic legislative reforms to establish accountability for hate crimes is a commendable objective. However, it is crucial to acknowledge that the political opposition to this initiative significantly diminishes the likelihood of rapid progress. Utilizing ICL may be advantageous (or perhaps obligatory) under some circumstances.

Based on this study, when summoned in such conflicts, ICL has the potential to do three actions. Initially, it merges the potential for recognizing individual accountability with enduring cultural prejudices. Furthermore, ICL may ensure that hate crimes as well as the suffering endured by their victims get the recognition, they deserve by designating them as fundamental international offenses or at the very least considering this possibility. Furthermore, initiating discussions on the potential utilization of ICL to establish accountability might bolster the endeavors of civil society in ensuring accountability and perhaps inspire regional and local tribunals to render decisions with a broader global impact. Upon closer examination, it becomes evident that the hate crimes occurring in India align with the criteria for crimes against humankind as defined by customary international law. There is evidence indicating that these crimes were perpetrated against civilians as a component of a broader and systematic attack, following a state policy that was endorsed and encouraged by the Union administration and law enforcement. The lynching atrocities provide as a clear explanation for the inherent persecution and murder. This article contends that victims and relevant parties should consider pursuing legal action against these wrongdoers by using both domestic and international legal systems. This essay aims to shift public focus towards the symbolic and practical importance of ICL (International Criminal Law) in India. It also seeks to promote more study and activity about the legal responsibility of people for hate crimes committed against Muslims and Dalits.

## Declaration

The author hereby declares that there is absence of any conflict of interest in this work.

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