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Ochlocracy and Lynching a Threat to Internal Security: A Psycho-Socio-Legal Analysis

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ABSTRACT

The ideological battles which were earlier restricted to intellectual debates have taken the form of 'rhetoric trespass' and have come down to the streets thereby, implanting the venoms of radicalisation into the minds of the populace. The occurrences of mob violence are spilling blood at a phenomenal pace and this calls for special legislation for 'criminalisation of collective violence' to preserve the plurality of the society. The history of collective violence in India illustrates that extremism has in the past led to the subjugation of the rule of law and the principles of democracy sabotaged by ochlocracy. The exodus of Jammu and Kashmir which was followed by genocide is a classic illustration of the evils of radicalisation which needs to be curtailed before the situation moves out of hand. At the heart of such anarchy lies intolerance, leading to ochlocracy in the form of lynching, vigilantism, etc. and the like. It's alarming to see that ochlocracy is fast becoming the new "normal" in the nation and the need for speedy justice and effective compensation mechanism for the victim becomes obligatory. The purpose of this article is to draw attention towards the menace of ochlocracy in general and vigilantism and lynching in particular; thereby providing a starting point for future empirical research on the subject. There are three prominent aspects to the paper. The concepts of ochlocracy will be discussed in the first section alongside lynching and many recent occurrences of political vigilantism. Secondly, it discusses in depth the psycho-legal and socio-legal aspects of collective violence. Lastly, it provides an insight into the current legal framework and recommends the need for special legislation to meet the ends of justice.

Keywords: Ochlocracy, Lynching, Political Vigilantism, Perceived-belief, Radicalisation.

I. INTRODUCTION

The rise of liberal philosophies of freedom of speech and expression, which subsidised significantly the strengthening of democracies around the world, has exposed these very

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societies to various types of misfortunes as an outcome of misinformation campaigns and the spread of fake news; bullying the very foundations of the rule of law. The ideological battles which were earlier restricted to intellectual debates have taken the form of ‘rhetoric trespass’ and have come down to the streets thereby, implanting the venoms of radicalisation into the minds of the populace. The occurrences of collective violence are spilling blood at a phenomenal pace and this calls for special legislation for ‘criminalisation of collective violence’ to preserve the plurality of the society.

The history of collective violence in India illustrates that extremism has in the past led to the subjugation of the rule of law and the principles of democracy sabotaged by ochlocracy. The exodus of Jammu and Kashmir which was followed by genocide is a classic illustration of the evils of radicalisation which needs to be curtailed before the situation moves out of hand. At the heart of such anarchy lies intolerance, leading to ochlocracy in the form of lynching, vigilantism, etc. and the like. It's alarming to see that ochlocracy is fast becoming the new "normal" in the nation and the need for speedy justice and effective compensation mechanism for the victim becomes obligatory. The delinquency arises when the ‘ideology is aimed at mobilising public opinion.’ It is frequently the dominant and radical ideology that imposes unfair and exploitative oppressive methods against the other³. The rapid surge in lynching episodes in India are ministered by the unending venomous ideological scuffle between the extreme left and extreme right of the political spectrum and poses a severe danger to the country's integrity. Mob lynching is one of those hate crimes whereby coordinated hate campaigns, has become a language of indoctrinating vigilantism. Religious tools are a type of investment used to instil hatred in people's brains. There has been a noticeable upsurge in communal forces that have been effective in spreading violence through extrajudicial punitive measures. Rumours are playing a significant role in this. The entire society is witnessing extraordinary levels of fascism and the communal stereotypes are burgeoning without a check. India lacks robust legislation to combat the spread of hate crimes through numerous social media platforms and the efforts of the government apparatus have been futile in accomplishing optimal deterrence. Consequently, the current situation necessitates the enactment of strict anti-lynching legislation and a well-functioning liability system so to offset the extreme elements and curtail the heinous propagandas from impacting the populace.

³ The Reign of Mobocracy, Not Democracy Plagues India, <www.thenewleam.com/2019/01/the-reign-of-mobocracy-not-democracy-plagues-india/> accessed on 13 March 2022

II. CONNOTATION OF OCHLOCRACY, LYNCHING AND VIGILANTISM

Ochlocracy symbolizes 'rule by the mob' or 'the mob as a ruling class'⁴, i.e. a form of a political system ruled by a small group of people who rule the majority with an iron fist by brutal means. It encompasses the commission of an act, forbidden or punishable by law, carried out at the request of a directed or undirected, ignorant or ill-informed mob or group of people or vigilantes in order to establish their belief or ideology.

Furthermore, the frenzied mob grants itself the right to take the law into its own hands in order to enforce its 'perceived belief,' which is frequently founded on prejudice, rumour, or ideology. 'Mob lynching,' on the other hand, occurs when a raucous mob under the pretext of administering justice without trial, executes a presumed offender, often after inflicting torture and corporal mutilation;⁵ for supposedly breaching a perceived belief. It amounts to extrajudicial punitive measures taken without due process of law; such a situation of flagrant human rights violation is an outburst of an existing contradiction in one community's religion in relation to an issue, as opposed to the beliefs of other communities. The crime is so heinous that it causes the crowd to spontaneously assemble and take down the perpetrator.⁶ As a result, in a democracy, such acts of terror pave the path for ochlocracy. In other words, it incarnates "*terms descriptive of the action of unofficial persons, organized bands, or mobs, which seize persons charged with or suspected of crimes or take them out of the custody of the law, and inflict summary punishment upon them, without legal trial, and without the warrant or authority of law*".⁷ The NAACP (National Association for the Advancement of Coloured People) defines lynching as "(1) evidence of a person's death; (2) the person's death must have occurred illegally; (3) a group of three or more persons must have participated in the killings; (4) the group must have acted on the pretext of protecting justice or tradition."⁸

'Vigilantism' on the other hand is the epitome of ochlocracy and mob violence, referring to 'the acts of resorting to violence by members of the society (vigilantes) against fellow citizens without any legal sanction or method established by law.' Vigilantism is defined by six important characteristics⁹:

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

⁵ < <https://www.britannica.com/topic/lynching> > accessed on 13 March 2022

⁶ Oliver C. Cox, "Lynching and the Status Quo", 14 J. Ng. Educ. 576, 2(1945), < <https://www.jstor.org/stable/pdf/2966029.pdf?refreqid=excelsior%3A41e781c94d070f3d60149977513c7e1c> >

⁷ The Law Dictionary, <https://thelawdictionary.org/lynch-law/> >

⁸ Et Contributors, "Why Government Should Make New Law on Lynching", *The Economic Times* (July 22, 2018, 12 : 47 P.M.), <https://economictimes.indiatimes.com/news/politics-and-nation/why-government-should-make-new-law-on-lynching-soon-before-its-too-late/articleshow/65085294.cms>.

⁹ Les Johnston, "What is Vigilantism?", 36 Brit. J. Criminology 220, 5 (1996)

- (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;*
- (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.*

Political Vigilantism: The recently concluded elections of the Uttar Pradesh Legislative Assembly 2022, illustrated a new trend of vicious propaganda in the lust for power; whereby, political campaigns were used to call for 'open-threat of violence' upon the police administration by an elected parliamentarian¹⁰ and also from a contestant of the assembly election¹¹. These events illustrate an unprecedented form of ochlocracy finding its root in the democratic setup of the nation in the form of "*political vigilantism*", where legislators threaten the executive with dire consequences upon being elected to power.

Timeline on Incidents of Lynching and Vigilantism leading to Ochlocracy (2015-2022)

TIMELINE	INCIDENTS	DESCRIPTION
2015	Dadri Lynching	Mohammad Akhlaq was murdered to death by a mob in Uttar Pradesh's Dadri on September 28, 2015, on the belief that his family was consuming beef at home. Later, forensic examinations revealed that the meat was mutton, not beef. This was the first time a mob lynched someone over a cow or beef ¹² .
2015	Dimapur Lynching	On 5 March 2015, in the Dimapur district of Nagaland, a person was accused of raping a woman. He was lynched by an angry mob that broke out into Dimapur Central jail,

¹⁰ AKHIL OKA, "ASADUDDIN OWAISI'S THREAT TO UP POLICE: 'AFTER PM MODI & YOGI LEAVE, WHO WILL SAVE YOU?'" < [HTTPS://WWW.REPUBLICWORLD.COM/ELECTIONS/UTTAR-PRADESH/ASADUDDIN-OWAISIS-THREAT-TO-UP-POLICE-AFTER-PM-MODI-AND-YOGI-LEAVE-WHO-WILL-SAVE-YOU.HTML](https://www.republicworld.com/elections/uttar-pradesh/asaduddin-owaisis-threat-to-up-police-after-pm-modi-and-yogi-leave-who-will-save-you.html) > ACCESSED ON 14 MARCH 2022

¹¹ The Print (4 March, 2022) "*Mukhtar Ansari's son threatens to 'settle account' with govt officials after UP Polls.*" < <https://theprint.in/india/mukhtar-ansaris-son-threatens-to-settle-account-with-govt-officials-after-up-polls-fir-lodged/858755/> > Accessed on 14 March 2022

¹² Arnold H.T. Sangma, "*Mob Lynching : An Uprising Offence Needed to be Strenuous under the Indian Legal System*", 2 Int'l J. Acad. Res. Dev. 30, 4(2017)

		dragged the accused and beat him to death ¹³ .
2016	Jharkhand Lynching	On 18 March 2016, Majloom Ansari, 32 and Imtiyaz Ansari, 12 were taking their cattle to a fair. The mob assaulted them near the Jhabar village of Jharkhand. Their bodies were hanged from a tree ¹⁴ .
2016	Una Lynching	On 11 July 2016, seven members of a Dalit family were beaten up by a group of cow protectors for skinning a dead cow in Una town of Gujarat ¹⁵ .
2017	Alwar Lynching	On April 1, 2017, Pehlu Khan was badly beaten by a mob in Alwar, while he was carrying cows to his dairy farm. He was suspected by the mob of illegally transferring cows. He succumbed to his injuries two days later ¹⁶ .
2017	Jharkhand Lynching	On 18 May 2017, Seven men were lynched due to widespread panic created through Whatsapp message warning against child kidnappers. Four men who were cattle traders passing through Sobhapur village were beaten to death. Three men were lynched at another place on the same evening. ¹⁷
2017	Delhi Lynching	On 25 May 2015, an e-rickshaw driver was beaten by a mob of students of Delhi University. The e-rickshaw driver tried to stop two drunken students from urinating in public to which the students later came in a group and brutally lynched the e-rickshaw driver ¹⁸ .
2017	Junaid Khan's Lynching	On 22 June 2017, A group of 10 — 12 men stabbed three brothers, Junaid, Hashim and Shaqir Khan, on suspicion

¹³Vijaita Singh, “Dimapur Lynching : It Was ‘Consensual Sex’ not Rape, Says Nagaland Govt. Report”, The Indian Express (March 12, 2015, 02 : 37 A.M.), < <https://indianexpress.com/article/india/india-others/dimapur-moblynching-victim-was-never-raped-nagaland-govt-tells-mha/>>

¹⁴ Story Map : Documenting Lynching in India

¹⁵ *ibid*

¹⁶ PTI, “Pehlu Khan Lynching Case: Clean Chit to All Six Accused Named in his Dying Declaration”, *The Times of India* (September 14, 2017, 05 : 56 P.M.), <https://timesofindia.indiatimes.com/city/jaipur/pehlu-khan-lynchingcase-clean-chit-to-all-six-accused-named-in-his-dying-declaration/articleshow/60514309.cms>.

¹⁷ “Story Map : Documenting Lynchings in India”, *The Wire*(July 13, 2017), <https://thewire.in/153091/storymaplynchings-india-cow-slaughter-beef-ban-gau-rakshak/>

¹⁸ Karn Pratap Singh, “Murder Over Public Urination: 5 Students Who Lynched E-Rickshaw Driver Still on the Run”, *The Hindustan Times* (June 2, 2017, 11: 13 P.M.), <https://www.hindustantimes.com/delhinews/murderover-public-urination-5-students-who-lynched-e-rickshaw-driver-still-on-the-run/storyFngG0eLS0tiWMNnsh9TB7M.html>.

		of carrying beef on a Delhi Mathura train. The argument arose over train seats. ¹⁹
2018	Jammu & Kashmir Lynching	A senior police officer was lynched by a mob outside Srinagar's main mosque. Mohammad Ayub Pandith, a DSP was lynched while taking photos outside the mosque. ²⁰
2018	Attack on Nigerian students	Five Nigerian students were attacked by the crowd while another was beaten with rods, bricks and knives in a shopping mall in Noida ²¹ .
2018	Nilotpal Das and Abhijeet Nath's Lynching	Das was a musician and event manager while Nath was an Engineering graduate. On 8 June 2018, at Panjuri village in Karbi Anglong district, they were beaten to death by a mob who suspected both of being abductors ²² .
2018	Child-lifter in Chattisgarh's Sarguja district	On 22 June 2018, a mob consisting of the villagers suspected an unidentified man to be a child-lifter and beat him to death. Rumours were circulated over the last few days in the area which resulted in the lynching ²³ .
2018	Rainpada Lynching	On 1 July 2018, a group of five people who were nomads came to the weekly bazaar of Rainpada hamlet which is a tribal area. Here, people assaulted them on the suspicion of being child-lifters. In the area, rumours about child-lifters were shared and the mob suspected the victims of being the same ²⁴ .
2018	Alwar's Lynching	On July 20, 2018, Rakbar Khan was accused of cow smuggling in the Alwar district of Rajasthan. Five persons

¹⁹ Story Map : Documenting Lynchings in India

²⁰ Toufiq Rashid & Ashiq Hussain, "Kashmir: Senior Police Officer Lynched by Mob Near Jamia Masjid in Srinagar", *The Hindustan Times* (June 23, 2017, 11: 49 P.M.), <http://www.hindustantimes.com/india-news/j-k-mobstones-man-to-deathafter-he-opens-fire-outside-mosque-in-nowhatta/storyzFlisCu2SnqGMSqt4ktWwO.html>.

²¹ "Attacks on Nigerian Students Shock India", BBC News (March 28, 2017), <http://www.bbc.com/news/worldasia-india-39415903>.

²² "Man Lynched, Another Beaten in Alwar", *The Indian Express* (July 23, 2018, 10: 54 A.M.), < <https://indianexpress.com/article/india/tripura-lynching-killing-child-lifters-5238635/> >

²³ *ibid*

²⁴ *ibid*

		were attacked on the accusation of smuggling. They lynched Akbar and his friend Aslam in the incident. It is said that they were actually taking two cows to their village in Haryana ²⁵ .
2019	Jharkhand Lynching	The 24-year-old Tabrez Ansari was assaulted by a mob in Jharkhand on suspicion of theft on June 18. ²⁶
2020	Palghar Lynching	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 rumours ²⁷ .
2021	Singhu Border Lynching	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 ²⁸ .
2022	Karnataka Lynching	The lynching of a 26-year boy named Harsh following the Hijab controversy in Karnataka on February 21, 2022 ²⁹ .

III. OCHLOCRACY AND LYNCHING ERODING DEMOCRACY: A PSYCHO-LEGAL ANALYSIS

Mahatma Gandhi once claimed, '*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 (...)*'.³⁰

Consequently, the recurrent manifestation of mobocratic violence has left behind a germane inquiry 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 elucidates the underpinning in the legal jurisprudence as to the catastrophe of imposing criminality upon the fierce mob

²⁵ *ibid*

²⁶ < <https://www.indiatimes.com/news/india/lynchings-continue-in-2019-as-well-this-is-not-the-new-india-most-of-us-want-to-see-369796.html> > accessed on 13 March 2022

²⁷ 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

²⁸ Sri 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/>

²⁹ 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

³⁰ MK Gandhi, '*Young India*' < https://www.mkgandhi.org/indiadreams/chap04.htm/_> accessed 8 March 2022

without a trailblazer. It sets a fatal precedent for the future if the mob ‘with the rhetoric of transgression³¹ is allowed to get away with acts of violence without taking responsibility for their acts of crime.

(A) ‘Perceived Belief’ as a Transgression Rhetoric

There have been numerous episodes of violence and mob lynching on the instruction of various social groups with ‘transgression rhetoric’ to enforce a ‘perceived belief’ upon the dissenting individuals. The virtue of humanity perishes as a consequence of such an ambition for power and domination over others. The recent debate in Karnataka over the wearing of religious symbols such as the hijab in schools is an archetypal illustration of mob violence, in which a minor issue of uniform code erupted into a national outcry, culminating in the murder of a young kid named Harsh for his anti-Hijab sentiments³². The abovementioned case demonstrates that the mob carried out the murder in order to impose their beliefs on the dissenting victim. Furthermore, the rise in cases of people taking the law into their own hands and resorting to the public lynching of alleged kidnappers or beef eaters has serious ramifications if not kept under check by the government, as citizens will lose faith in the judiciary and legislature, leading to a state of complete lawlessness and instability.

(B) Unanimous Prejudice as a Binding Force in Collective Violence

The mob carrying out collective violence is said to have a unanimous prejudice with *a culturally homogenous, intimate and interdependent outlook*³³. The strong partisanship among the mob is generally backed by likeminded outside groups which hold the same biased view.³⁴ The recent case of protest against the newly enacted farm laws³⁵ 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.³⁶

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

³¹ Les Johnston, “*What is Vigilantism?*”, 36 Brit. J. Criminology 220, 5 (1996)

³² 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

³³ 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/>>

³⁴ *ibid*

³⁵ The Farmers’ Produce Trade And Commerce (Promotion And Facilitation) Act, 2020

³⁶ 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

the Ministry of Home Affairs in its report.”³⁷ Additionally, the efforts of the administration to sojourn these acts of alleged nuisances were also confronted with weapons resounding mob present at these sites³⁸. The masterminds of the protests incited the unacquainted and misinformed crowd to commit acts of violence against humanity in general and the state in particular. In both cases, the mob was reinforced by outside vested interest groups that provided intellectual and logistical support to the mob based on shared views and prejudices. The extensive history of protests in India demonstrates that political leaders take a back seat and instigate their political puppets to resort to violence by purposefully misleading and manipulating the naive populace.

(C) Dissent truncated by Violent Majoritarianism

In every democratic country, elected representatives of the people submit to substantial demands of minority groups in order to accommodate diverse viewpoints and handle an issue and address a controversy. 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 whims 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 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 anti-farm law protests, the unruly masses demonstrated the evils of majoritarianism by resorting to violence on an unprecedented scale, challenging previous notions of the right to protest. The incident that occurred on January 26, 2021, shook the consciousness of the society and cast doubt not only on the country's sovereignty and integrity but also on the optimism bestowed upon the democratically elected government's wisdom. On the said day, the protestors of the ongoing protest did not follow the

³⁷Neeta 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-cao-protests-ed-to-mha-2183376/ > accessed 8 March 2022

³⁸Divyanshu 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

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 ramparts³⁹. These acts of violence, along with numerous other acts of sectarianism, compelled the government to revoke the newly adopted farm reform measures, demonstrating how democracy can be crushed to make way for ochlocracy utilising the same democratic institutions apparatuses and freedoms.

(D) Rumour as a tool of Radicalism

Rumours have an unshakable influence on mob violence as the most prevalent instrument used to incite mob and fume violence, especially in the age of the digital 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 a 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 protests⁴⁰.

In addition, autonomous groups of activists backed by several political parties have invented a new form of propaganda mechanism in the form of a toolkit to accomplish their agendas and conspiracies⁴¹. Consequently, laws enacted in the parliament cannot be upheld or withdrawn because of a frenzied mob that takes up to the streets. The practice of social or religious groups dictating terms to the government from the streets is increasing at an alarming rate, reflecting trends against the spirit of democracy and dangerous impulses toward mobocratic actions.

IV. SOCIO-LEGAL PERSPECTIVE ON OCHLOCRAZY AND LYNCHING

The right to dissent and register protest as enshrined under the Constitution of India should be enforced in its true spirit without an exemption in order to shield the sacrosanctity of the

³⁹ '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

⁴⁰ 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-caa-protests/> > accessed 9 March 2022

⁴¹ '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

judiciary and preserve 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 a show of strength but on merits of the controversy in accordance with the law, for which a robust judicial system is available*⁴². However, no specific legislation or regulation criminalises mob lynching or an act of ochlocracy; therefore, the criminal justice system puts into practice the provisions of the Indian Penal Code, 1860 for the framing of charges alongside the provisions of the Unlawful Activities Prevention Act, 1967.

(A) Legislative Landscape

Due to the dearth of a specific law, mob-related offences or acts are typically filed under the heading of Offences against Public Tranquility i.e. under the head of:

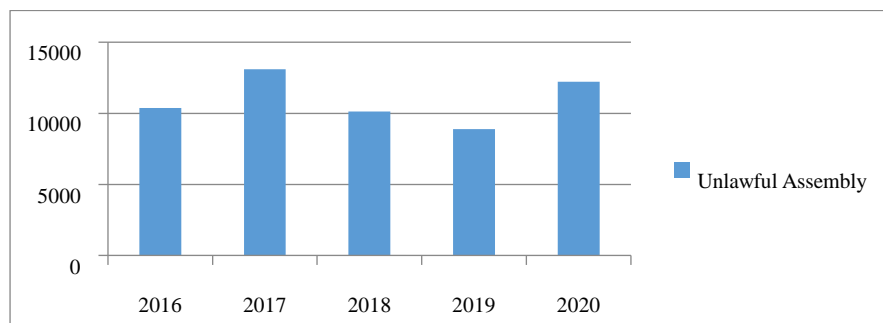
- a. Unlawful Assembly Sec 143, 144 & 145 of the Indian Penal Code, 1860.
- b. Rioting (includes rioting on the ground of religion, race & place of birth) Sec 147 - 151, 153 & 153A of the Indian Penal Code, 1860.
- c. Offences Promoting Enmity between Different Groups Sec 153A & 153B of the Indian Penal Code, 1860, which deals with the broadcasting of irresponsible and explosive messages and violence in various social media platforms, which could have a possible element to inspire lynching or violence.

Factual Analysis: A statistical study is required to comprehend the savagery and rise in actions of ochlocracy. Because the National Crime Records Bureau does not collect statistics on mob lynching, official/government data under the heading of mob violence or ochlocracy is currently unavailable. In the annual publication 'Crime in India' by The National Crime Records Bureau (till the year 2016) rioting was apportioned into an agrarian, caste conflict, political, communal, students, sectarian, industrial and another 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 the ground of religion, race & place of birth and imputation, assertions detrimental to national integration.

The following Charts represents the data for the same between the years 2016 to 2020.

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

⁴² CBI ACB Kolkata v. Firhad Hakim, 2021 SCC OnLine Cal 1642

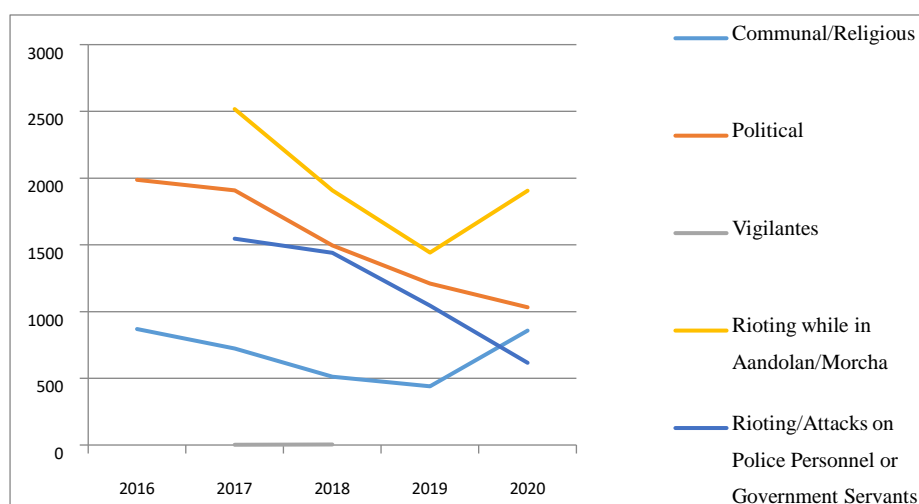


Source: National Crime Records Bureau

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

Inference: The Chart shows that the number of cases classified as unlawful assembly peaked in 2017, then declined until the year 2019, before reversing course to reach a similar high in 2020.

Chart 2: Number of cases registered under rioting in India



Source: National Crime Records Bureau

(Note: Due to non-receipt of data from West Bengal in time for 2019, Data furnished for 2018 has been used)⁴³

From Chart 2 above, the following may be inferred:

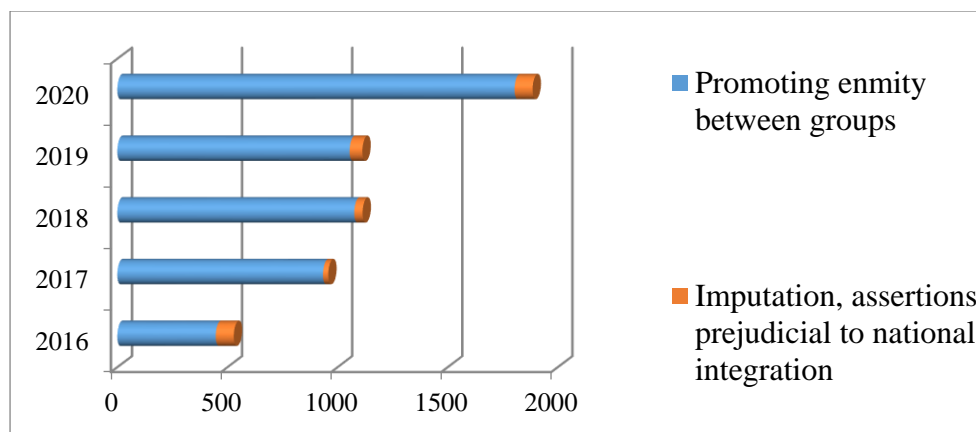
- a. Each incidence resulted in an average of one to four major injuries. As a result, practically all cow-related violence episodes were directed towards a single person or a small group of people. Minor injuries were omitted since they were largely caused by collateral damage, and the victims were mostly families or police officers attempting to maintain control of the situation. As a result, they are not considered targeted victims.

⁴³ National Crime Records Bureau, *Crime in India* (67th Edition, Volume I, 2019)

Furthermore, the number of occurrences and serious injuries both decreased dramatically in 2018, showing a decrease in the amount of mob violence incidents.

- b. However, in 2017, new sub-heads to the general category of rioting were added, such as vigilantism and rioting while in Andolan/morcha, and rioting/attacks on police personnel or government officials while in protests, indicating a steady increase in rioting while in Andolan/morcha from 2017.
- c. Unfortunate attacks on police officers and government employees spiked in 2017, but then gradually declined in the years after.

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

The growing cases of violence and attacks on government officials depict the growing roots of ochlocracy in the nation.

(B) Constitutional Landscape

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 will to deal with the issue of mobocracy. Article 14 of the Constitution of India, 1950 assures everyone in India's territory equality before the law and equal protection under the law, which includes the right to non-

discrimination. Discrimination based on caste, sex, race, or religion is prohibited by Article 15 of the Constitution of India, 1950. Lynching contravenes Article 14 of the Constitution of India, 1950, which guarantees equality and prohibits discrimination, and Article 15 of the Indian Constitution, which prohibits discrimination. Correspondingly, Article 21 prevents the state from depriving a person of his/her personal life or liberty. The Indian judiciary has been extremely cautious in combating the threat of ochlocracy.

- a. In the case of *PUCL v. Union of India*⁴⁴, The court pointed out that an ignorant and uninformed citizenry would degrade democracy and narrow the distance between democracy and ochlocracy. It made a practical remark 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.”

- b. Furthermore, in the case of *Jerome Christudas v. the State of Kerala*⁴⁵, the apex court of India believed that protests in the name of dissent cannot turn to ochlocracy and hold the rule of law hostage, effectively negating the statutory mandate and held that:

“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 ochlocracy, 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.”

- c. In *National Human Rights Commission v. the State of Gujarat*, the Supreme Court observed:

“Communal harmony is the hallmark of a democracy. No religion teaches hatred. If in the name of religion, people are killed, that is essentially a slur and blot on the society governed

⁴⁴ (2003) SCC OnLine SC 394

⁴⁵ (2016) SCC OnLine Ker 10845

by the rule of law. The Constitution of India, in its Preamble, refers to secularism. Religious fanatics really do not belong to any religion. They are no better than terrorists who kill innocent people for no rhyme or reason in a society which as noted above is governed by the rule of law⁴⁶.”

- d. Correspondingly, the court in the case of *Mahanagar Telephone Nigam Ltd. v. Bharatiya Mahanagar Telephone Nigam Karamchari Sangh and others*⁴⁷ demonstrated that freedom of expression and assembly has limits and cannot be utilised at any location or way according to one's whims and fancies. The court observed 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 ochlocracy and intimidation. Freedom of speech and free assembly cannot mean that the right can be exercised wherever, whenever and howsoever.”

- e. Moreover, in the case of *Mukesh v. State of Bihar*⁴⁸, 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 ochlocracy 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 practised in his own home and not to be flaunted or worn on the sleeve in public.”

- f. Correspondingly, in the case of *Vasudev Gupta v. the State of UP*⁴⁹, the court illustrated that law cannot be made to dance at the tune of ochlocracy and observed:

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

- g. It is pertinent to note that the Supreme Court expressed its anguish in the case

⁴⁶ (2009) 6 SCC 342

⁴⁷ 1991 SCC OnLine Del 236

⁴⁸ 2017 SCC OnLine Pat 949

⁴⁹ 2011 SCC OnLine All 798

of *Bhagwan Dass v. State (NCT of Delhi)*⁵⁰ that the threat of numerous dogmatic organisations imposing their decisions on the population would lead to ochlocracy, which is a severe problem for our democratic policy. The apex court observed:

“Organizing Khaps on the caste basis and implementing their decisions instantly will turn the democracy into ochlocracy. 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 the danger of collapse of our institutions and rule of law that will lead to anarchy.”

- h. However, the most noteworthy development on the issue of ochlocracy took place in the landmark case of *Tehseen Poonawalla v. Union of India*⁵¹, 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*⁵² to condemn the acts of violence by private individuals/mobs. 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 ochlocracy 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.⁵³ 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 in 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 the law into his/their hands and deal with a person treating him as guilty”.⁵⁴

- i. The rising incidences of mob violence and lynching across the country are an indication of the undercurrent of intolerance that has crept into society and people's thinking. The

⁵⁰ (2011) 6 SCC 396

⁵¹ (2018) 9 SCC 501

⁵² 471 U.S. 261

⁵³ *ibid*

⁵⁴ *ibid*

High court of Calcutta in the case of *CBI ACB Kolkata v. Firhad Hakim and Others*⁵⁵ concerned about the ambiguous legal stance on whether obstructing government machinery is considered ochlocracy. The court commented:

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

As a result, it is critical for the central authority to enact a Uniform Central Law to address the issue of ochlocracy and offer a deterrent against repeat occurrences. Such a necessity has been discussed on multiple occasions, but no legislation has been offered in Parliament as of yet.

(C) International Covenants

India being the largest democracy in the world pledges utmost priority towards human rights. The United Nations plays a significant role in the protection and promotion of human rights. The international covenants and conventions ratified by India are:

Article 1 of the Universal Declaration of Human Rights (hereinafter referred to as **UDHR**) states, *“All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.”*⁵⁶

Article 3 of UDHR warrants the *“right to life, liberty and security.”*⁵⁷

Article 7 of UDHR pledges that *“All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.”*⁵⁸

Article 12 of UDHR assures, *“No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, or to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.”*⁵⁹

Article 6 of the International Covenant on Civil and Political Rights (hereinafter referred to as **ICCPR**) provides the right to life, *“Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”*⁶⁰

⁵⁵ 2021 SCC OnLine Cal 1642

⁵⁶ United Nations < [http : //www.un.org/en/universal-declaration-human-rights/](http://www.un.org/en/universal-declaration-human-rights/) > (accessed on 13 March 2022)

⁵⁷ *ibid*

⁵⁸ *ibid*

⁵⁹ *ibid*

⁶⁰ United Nations Human Rights Office of the High Commissioner, < [http : //www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx](http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx) > (accessed on 13 March, 2022).

Article 19 of ICCPR warranties “*the right to hold opinions without interference.*”⁶¹

Article 20 of ICCPR pledged “*prohibition by law of any sponsors of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.*”⁶²

V. RECENT DEVELOPMENTS TO CURTAIL OCHLOCRACY AND LYNCHING

The momentous judgement of *Tehseen Poonawalla v. Union of India*⁶³ called for legislation against the growing instances of vigilantism and lynching in the nation. Following this, the **Manipur** government was quick to retort and put forth 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.

The **Rajasthan** government too passed a bill against lynching in August 2019; post-2014, 86% of incidents of mob lynching reported in the country took place in Rajasthan⁶⁴. The state government accepted a few of the guidelines issued in the said case but preferred to remain silent on the question of police officers' accountability in cases of 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 government of **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 endorsing these principles, the state should also include provisions for the punishment of doctors and medical personnel who are accused of dereliction of duty for failing to attend to lynching victims or submitting false reports without conducting a proper and thorough medical examination of the victims, either under duress from the police or because of their own prejudice against a specific community or religion of the victims. The cash to be given to the

⁶¹ *ibid*

⁶² *ibid*

⁶³ (2018) 9 SCC 501

⁶⁴ ‘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

victims should be recovered from the perpetrators of the crime or collective fines imposed on those involved for the act of violence under the victim compensation plan. 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*⁶⁵,

“...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 a threat to 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 enact a pan-India law to prevent ochlocracy and to provide for harsh penalties against anyone found guilty of inciting mobs, supporting or felicitating mob violence, including political leaders, religious or sectarian leaders, and government officials. Mob lynching will continue to occur until a zero-tolerance policy is implemented in dealing with them. Punitive action against police officers accused of dereliction of duty, as enacted by the Manipur government, might be repeated in the Central law as well, as it would dissuade police officials from being partisan in favour of the administration. Furthermore, a special provision for providing speedy justice to the victims and an effective victim compensation mechanism is required to curtail offences relating to collective violence.

VI. CONCLUSION

Democracies across the globe have an extensive history of imprisoning critics, suffocating dissent, passing laws without debate, outlawing interfaith marriages, utilising majoritarian practices, and the government's malicious use of the religion card for appeasement and vote bank politics. Regardless, no form of mobocratic behaviour can ever be acceptable, and the government should not be hesitant to employ law enforcement and the criminal justice system to prosecute actions that propagate misinformation and deceive the public under the pretence of freedom of speech and expression. Furthermore, as the number of incidences of mob violence in India continues to rise at an alarming rate, developing a central regulation and

⁶⁵ Writ Petition (Civil No.) 330 of 2018

ensuring its efficient execution is critical to ensure the integrity and sovereignty of the nation and to uphold the rule of law as enshrined in the Constitution of India.
