

RAJASTHAN'S EFFORT TO CRIMINALISE MOB LYNCHING IS A GOOD START

Relevant for: Indian Polity | Topic: State Legislatures - structure, functioning, conduct of business, powers & privileges and issues arising out of these

Pehlu Khan's son Irshad Khan. File | Photo Credit: [The Hindu](#)

In furtherance of the recommendations made by the apex court in *Tehseen S. Poonawalla v. Union of India*, the Rajasthan government has introduced the Rajasthan Protection From Lynching Bill, 2019. If it gets passed, Rajasthan will be the second State after Manipur to have a dedicated law criminalising mob lynching as a special offence, in addition to other offences under the Indian Penal Code.

The Bill follows the Supreme Court's recommendations in authorising the setting up of special courts, appointment of a dedicated nodal officer, and stipulating enhanced punishments. However, its scope is more comprehensive as it not only criminalises acts of lynching, dissemination of 'offensive material' and fostering of a 'hostile environment', but also provides for relief, legal aid, compensation and rehabilitation.

The Bill defines lynching as an act or series of acts of violence or aiding, abetting or attempting an act of violence, whether spontaneous or planned, by a mob (two or more persons) on the grounds of religion, race, caste, sex, place of birth, language, dietary practices, sexual orientation, political affiliation and ethnicity. Though wide-ranging in content, the document does not cover cases of solitary offences. Noticeably, the Bill says that police officers and district magistrates have to take measures to prevent lynching and related offences. However, unlike the law on mob lynching in Manipur, it does not prescribe any punishment for dereliction of duty.

Further, some of the Bill's provisions might attract legal scrutiny. Section 8(c) of the Bill says that whoever commits an act of lynching, where the act leads to the death of the victim, shall be punished with rigorous imprisonment for life and a fine not less than 1,00,000 and which may extend to 5,00,000. As regards sentencing, this provision completely deprives the judiciary of any amount of discretion.

It needs to be stated that a court needs to consider all the facts and circumstances, different for each crime, while making a decision on punishment. The Supreme Court, while declaring Section 303 of the IPC unconstitutional in *Mithu Singh v. State of Punjab*, held that "the exercise of judicial discretion on well-recognised principles is, in the final analysis, the safest possible safeguard for the accused. The legislature cannot make relevant circumstances irrelevant, deprive the courts of their legitimate jurisdiction to exercise their discretion".

Section 9 of the Rajasthan Bill stipulates, *inter alia*, the same punishment for lynching and "attempting" an act of lynching. In the context of criminal law and sentencing, the principle of proportionality mandates an adequate balance of the gravity of the crime, the interests of the victim and of society, and the purposes of criminal law. The constitutional courts have time and again applied the principle of proportionality and have struck down laws that are excessively harsh or disproportionate.

Lynching is an egregious manifestation of prejudice, intolerance, and contempt towards the rule of law. With all its limitations, the Rajasthan Bill is evidence of political will by the State government. It is expected that deliberations help in the enactment of a more constitutionally

robust Bill. However, legislation cannot act as a panacea; what is required is political commitment. It is high time that the other States and the Centre show some urgency so that creeping threats are prevented from metastasising into an out-of-control monster.

Anmolam is a lawyer, running BDLAAW, a non-profit organisation; Farheen Ahmad is a research scholar at the South Asian University, New Delhi

Support quality journalism - [Subscribe to The Hindu Digital](#)

Please enter a valid email address.

How an idea for a ‘perfect Mumbai feature story’ failed to materialise

Support The Hindu's new online experience with zero ads.

Already a user? [Sign In](#)

END

Downloaded from **crackIAS.com**

© Zuccess App by crackIAS.com

crackIAS