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Showing The Way: On Manipur's New Anti-lynching Law

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(This editorial is based on the article “Showing the way: on Manipur's new anti-lynching law” which appeared in The Hindu on 17th January 2019.)

It has been already six months since the Supreme Court described mob lynchings as ‘horrific acts of mobocracy’ — and, issued a slew of directions to the Union and State governments to protect India’s ‘pluralist social fabric’ from mob violence.

The apex court felt compelled to act due to four years of surging hate violence targeting religious and caste minorities (*while the government looked on helplessly*). It also urged Parliament to consider passing a law to combat mob hate crime.

Despite this the Union and most State governments have done little to comply with the directions of India's highest court.

But thankfully, Manipur became the first to pass a remarkable law against lynching, late 2018. It did this after a single horrific video-taped lynching of a Muslim youth with an MBA degree stirred the public conscience.

Need for Anti-Lynching Laws

- There has been increase in number of lynching all over the country because of spread of fake news. About 86% of those killed belonged to vulnerable communities and minorities.
- In 21% of the cases, the police filed cases against the victims/survivors.
- Cow-related lynchings rose sharply in 2017, with 20 attacks in the first six months. This marks a 75% increase over 2016, which had been the worst year for mob lynchings since 2010.
- Police and Public Order are State subjects under the Seventh Schedule to the Constitution of India. The responsibility to maintain law and order and protect life and property, therefore, rests with the respective State Governments.
- The Ministry of Home affairs have, however, issued advisory to the States and UTs,

from time to time, to maintain law and order and ensure that any person who takes law into his/her own hand is punished promptly as per law.

Highlights of Manipur Anti-lynching Law

- **The Manipur law closely follows the Supreme Court's prescriptions, creating a nodal officer to control such crimes in every State, special courts and enhanced punishments.**
- Its weighty significance lies in that it breaks new ground in some critical matters concerning hate violence in India, and shows the way in which the Union and other governments need to move if they are serious about combating hate crimes.
- **Its definition of lynching is comprehensive, covering many forms of hate crimes. These are "any act or series of acts of violence or aiding, abetting such act/acts thereof, whether spontaneous or planned, by a mob on the grounds of religion, race, caste, sex, place of birth, language, dietary practices, sexual orientation, political affiliation, ethnicity or any other related grounds"**
- **The most substantial and worthy contribution of the law is that it is the first in the country dealing with the protection and rights of vulnerable populations which creates a new crime of dereliction of duty of public officials.**
- It lays down that "any police officer directly in charge of maintaining law and order in an area, omits to exercise lawful authority vested in them under the law, without reasonable cause, and thereby fails to prevent lynching shall be guilty of dereliction of duty" and will be liable "to punishment of imprisonment of one year, which may extend to three years, and with fine that may extend to fifty thousand rupees".
- Equally pathbreaking is that it removes the protection that is otherwise extended to public officials charged with any offence committed while acting in their discharge of official duty.
- At present, no court can take cognisance of such an offence except with the previous sanction of the State government. The Manipur law means that now no prior sanction is required to register crimes against public officials who fail in their duties to prevent hate crimes such as lynching.
- It does away with the requirement of prior state sanction before acting on a hate crime.
- All hate crimes today should attract Section 153A of the Indian Penal Code, which is related to fostering enmity between people on the basis of religion, race, language and so on. But registering this crime requires prior permission of the State government, and most governments use this power to shield perpetrators of hate crimes who are politically and ideologically aligned to the ruling establishment. The Manipur law does away with this requirement, which would make acting against hate crimes far more effective and non-partisan.
- It clearly lays down the duty and responsibility of the State government to make arrangements for the protection of victims and witnesses against any kind of

intimidation, coercion, inducement, violence or threats of violence.

- It also prescribes the duty of State officials to prevent a hostile environment against people of the community who have been lynched, which includes economic and social boycott, and humiliation through excluding them from public services such as education, health and transport, threats and evictions.
- The last substantial contribution of the law is requiring the state to formulate a scheme for relief camps and rehabilitation in case of displacement of victims, and death compensation.

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- **The law, excludes from its provisions solitary hate crimes.**
- For the law to apply instead it requires that these hate crimes are undertaken by mobs (defined as a group of two or more individuals, assembled with a common intention of lynching), thereby excluding from its provisions solitary hate crimes.
- **The majority of hate crimes were indeed by mobs of attackers and onlookers, but there are solitary hate murders as well, such as of the Bengali migrant Mohammad Afrazul in Rajasthan. This restriction of numbers is arbitrary, since the essence of what distinguishes these kinds of crimes is not the numbers of attackers but the motivation of hate behind the crimes; therefore, provisions of this law should apply to all hate crimes, not just lynching, regardless of the numbers of persons who participate.**

Way Forward

- The Indian law books are bulging with all sorts of laws that seem good on paper while being completely ineffective. India would be a paradise of social justice if all these impressive laws actually addressed the problems they seek to deal with.
- The Manipur government has broken new ground, being the first government in the country to hold public officials criminally accountable if they fail to prevent hate crimes.
- If emulated by the Union and other State governments, such a sterling law could substantially prevent hate attacks, ensure public officials are faithful to their constitutional responsibilities and victims, and that their families and communities are assured of protection and justice.
- **Laws should include the crimes of dereliction of duty - deliberately protecting criminals during investigation after the hate crime.**
- Most importantly, incorporate command responsibility, so that officials and also those who have directed them to betray their constitutional duties are criminally liable.
- **Law also needs to prescribe a much more expansive framework of mandatory gender-sensitive reparation on an atonement model, requiring the state to ensure that the victim of hate violence is assisted to achieve material conditions**

that are better than what they were before the violence, and that women, the elderly and children are supported regularly with monthly pensions over time.

- This is the India we must claim — of safety, fairness and fraternity.
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