



AN EMPIRICAL STUDY TO ASSESS THE NEED FOR A CENTRAL LEGISLATION TO COMBAT MOB LYNCHING IN INDIA

Tarakeshwari D. Bulusu*

Faculty of Law, The Maharaja Sayajirao University of Baroda, Gujarat.

Corresponding Author Email: tarabulusu@gmail.com

Shweta Thakur

School of Law, Galgotias University, Uttar Pradesh.

Email: shweta.thakur@galgotiasuniversity.edu.in

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ABSTRACT

Respect for the constitutional values, democratic values and rule of law are fundamental to the existence of a civilized society, a state and a nation. Protecting the life and liberty of its citizens is the sacrosanct duty of the State. The State and its institutions alone have the power to curtail the liberty and life of a person according to procedure established by law. Private citizens do not have the power to curtail other's liberty or life except in the circumstances laid down by the criminal law of the country. More than 300 mob lynching incidents have occurred in India since 2015. Lynching by irate mobs of those suspected of having committed crimes like theft, rape, murder and those suspected to have slaughtered cows, consumed, sold or transported beef have been reported from across the length and breadth of India. The intervention of the Supreme Court of India in 2018 led to a fall in the mob lynching incidents. The Apex Court also suggested to the Central Government to consider enactment of a special legislation. The Central Government is yet to enact the same and the incidents have once again begun to be reported in the newspapers since January 2021. The infliction of extra-judicial punishment by private citizens on those suspected to have violated the law or social norms of a society in the form of mob lynching has posed a serious threat to the rule of law and to the administration of criminal justice system in India. The writers of the present paper seek to examine the efficacy of the existing laws to combat mob lynching in India and assess the need for a special legislation through an empirical study.

KEYWORDS: Mob Lynching, Rule of Law, Central Legislation, Criminal Justice System.

INTRODUCTION

Respect for the constitutional values, democratic values and rule of law are fundamental to the existence of a civilized society, a state and a nation. Disrespect or

disregard of the constitutional tenets only leads to disharmony in the society and collapse of a State. Protecting the life and liberty of its citizens is the sacrosanct duty of the State. The State and its institutions

alone have the power to curtail the liberty and life of a person according to procedure established by law. Private citizens do not have the power to curtail other's liberty or life except in the exercise of right of private defence as laid down by the criminal law of the country. Between 250 and 300 mob lynching incidents have occurred in India since 2015. Lynching by irate mobs of those suspected of having committed crimes like theft, rape, murder and those suspected to have slaughtered cows, consumed, sold or transported beef have been reported from across the length and breadth of India. The intervention of the Supreme Court of India in 2018 led to a fall in the mob lynching incidents. The Apex Court also suggested to the Central Government to consider enactment of a special legislation. The Central Government is yet to enact the same and the incidents have once again begun to be reported in the newspapers since January 2021. The infliction of extra-judicial punishment by private citizens on those suspected to have violated the law or social norms of a society in the form of mob lynching has posed a serious threat to the rule of law and to the administration of

criminal justice system in India. The writers of the present paper seek to examine the sufficiency and efficacy of the existing laws to combat mob lynching in India and assess the need for a special legislation through an empirical study.

PROBLEM OF LYNCHING – A PAN INDIA SCENARIO

Lynching of Syed Farid Khan, a rape accused, in Dimapur, Nagaland in February 2015 followed by the lynching of Mohammad Akhlaq on suspicion of consuming beef in Dadri, Uttar Pradesh, in September 2015 triggered a spate of such incidents across the country. Reports of irate mobs meting out vigilante justice to those suspected to be kidnappers, rapists, thieves, murderers and drug peddlers poured in from all parts of the country. Mob lynching incidents were not restricted to any particular State but they spanned the length and breadth of India. The extent of the problem has been depicted in the form of Fig. 1

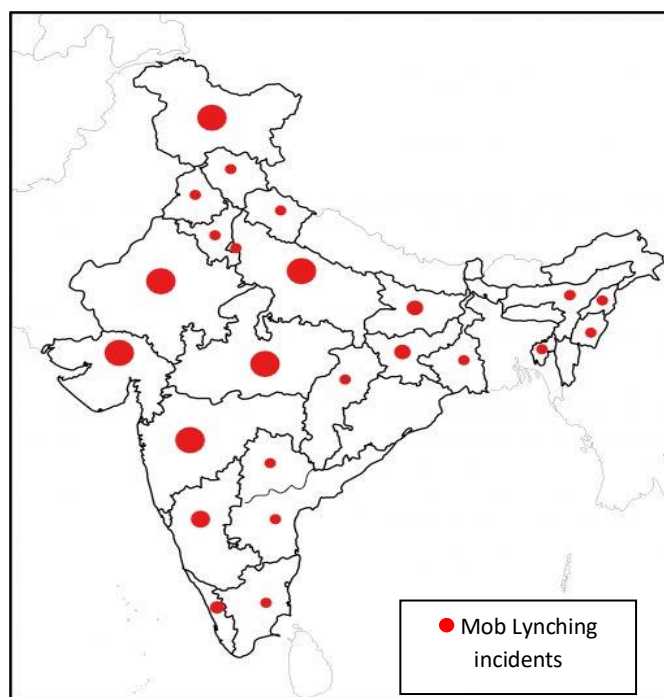


Figure 1. Extent of Mob Lynching in India

Himachal Pradesh, Uttarakhand, Punjab, Haryana, Uttar Pradesh, Bihar, West Bengal, Assam, Nagaland, Manipur, Tripura, Jharkhand, Chhattisgarh, Telangana, Andhra Pradesh, Tamil Nadu, Kerala, Karnataka, Maharashtra, Gujarat, Rajasthan, Madhya Pradesh and the Union Territories of Delhi, Jammu & Kashmir have witnessed the macabre of mob lynching. This only reveals that mob lynching has become a national phenomenon and mobocracy has become the new norm.

LAW AND MOB LYNCHING

Presently, there is no special legislation to combat mob lynching. In most of the incidents of mob lynching analyzed by the writers, it has been found that the incidents

have resulted into the grievous injuries and death of the victims. In some of the incidents, loss to property, in the form of theft or damage to the vehicle of the victim has also occurred. The resultant disturbance to the peace of the society by the mob lynching incidents has seen the invocation of the provisions punishing offences against public tranquillity. Likewise, provisions pertaining to offences against body and offences against property of the Indian Penal Code, 1860 have and are being applied and the perpetrators have and are being charged under the relevant provisions of the afore-mentioned three chapters.

The various provisions of The Indian Penal Code, 1860 (I.P.C) that have been and are being applied have been culled by the writers and the same are depicted in Table 1.

TABLE 1. Relevant Provisions of the Indian Penal Code, 1860 vis-à-vis Mob Lynching

Sr. No.	Sections	Offence
1	141-145	Unlawful Assembly
2	146-149	Rioting
3	153A	Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony.
4	302	Punishment for Murder
5	304	Punishment for culpable homicide not amounting to murder
6	307	Attempt to Murder
7	308	Attempt to commit culpable homicide
8	323-326	Punishment for voluntarily causing hurt, grievous hurt and causing grievous hurt by dangerous weapons or means
9	341-342	Punishment for Wrongful Restraint & Wrongful Confinement

10	435	Mischief by fire or explosive substance with intent to cause damage to amount of one hundred or (in case of agricultural produce) ten rupees
11	447-448	Punishment for Criminal Trespass & House-Trespass
12	34	Acts done by several persons in furtherance of common intention
13	120B	Punishment for Criminal Conspiracy

Source: Writer's own compilation from the Indian Penal Code, 1860.

However, there are limitations in the application of some of the provisions of Indian Penal Code, 1860 and the same are discussed as under:

Definition of Unlawful Assembly has a Limited Application to Mob Lynching Cases

Application of section 141 in cases of Mob Lynching can be justified only to the extent of the following of illegal objects laid down in clauses (iii) and (iv) of section 141 of the I.P.C.: -

(iii) To commit any mischief or criminal trespass, or other offence; or (iv) To obtain forcible possession of any property of any person or effect dispossession of any property by use or show of criminal force or depriving any person of the enjoyment of incorporeal and easementary rights.¹

If the principle of *eiusdem generis* is applied to the interpretation of Clause (iii), then the use of words 'other offence' after the words 'to commit mischief or criminal trespass' implies the offences which fall in the category of mischief and criminal trespass. If this natural interpretation is given to the words 'other offence', the application of section 141 to mob lynching cases will be severely restricted.

Most of the mob lynching incidents have occurred with the object of administering justice or inflicting punishment to the

transgressors of law or social norm. Such acts are beyond the ambit of section 141.

Where the Mob Constitutes Less Than Five Members

Minimum five members are required to constitute an unlawful assembly. Section 141 will be rendered ineffective in case of lynching that takes place in which less than five persons (perpetrators) are involved. There have been cases where two or three persons have lynched the victims. Such cases cannot be tried under this section.

Where Some of the Members of the Unlawful Assembly are Acquitted

Section 141 becomes ineffective if some of the members of the unlawful assembly are acquitted by the court and the number of perpetrators becomes less than five. This can be explained with an illustration given below.

Illustration. At the time of framing the charges there were seven persons involved in the lynching. However, during the trial, the court does not find any concrete evidence inculcating three of the members of mob (Unlawful Assembly) and it acquits such members. The remaining four members whose role is proved cannot be charged under section 141 as they no longer constitute an unlawful assembly. To constitute an unlawful assembly, a minimum of five members are required.

The trial of the remaining four members cannot continue under section 141. To secure their conviction new charges have to be framed.

This limitation causes hardships to the prosecution and precious time is wasted in reframing the charges and conducting the proceedings. Thus, in the absence of a specific definition of mob and mob lynching, Section 141 has limited application.

Rigours of section 142 Can Lead to Implication of Innocent Bystanders

Section 142 defines as to who is a member of an unlawful assembly. To designate a person as a member of an unlawful assembly, the following two conditions have to be satisfied:

- (i) The person joining the assembly must be aware of the facts which render the assembly unlawful as specified in section 141, and
- (ii) The person must either intentionally join that assembly, or if he joined the assembly before being so aware, he must continue in it after becoming so aware.²

Thus, it has to be proved that the accused had knowledge that the assembly was unlawful and he intentionally joined it. Alternatively, in a situation where the accused was not aware of the illegal object of the assembly at the time of joining but that after having learnt about its illegal object, he continued to remain in the assembly, has to be proved by the prosecution. However, the application of the definition poses a few problems in mob lynching cases. In incidents of mob lynching, presence of bystanders or passerbys who stopped or gathered at the spot of occurrence has been found. Such innocent bystanders were not involved in the act of lynching. Attributing knowledge and intention to such persons based on their mere presence cannot render them members of an unlawful assembly. It has been seen in some of the cases of mob lynching, the

prosecution relied upon the Cell Phone Tower Triangulation Records and Call Data Records (CDR) of all the persons found at the scene of occurrence to prove participation in the crime. These techniques can only prove the presence but not the intent or knowledge of a person. Thus, there is a danger of implicating an innocent person.

Also, it is difficult to prove whether the person is merely a bystander or a member of the unlawful assembly, especially, when the latter pleads that he was a bystander.

Conceptual Error in Equating Mob Lynching with Rioting

Use of force or violence by an unlawful assembly or any of its member, in prosecution of the common object of such an assembly is rioting under section 146.[3]

Every member of such an unlawful assembly would be guilty of committing a riot. Applying the principle of joint liability, even in a situation where only one of the members of such an assembly uses force or violence on the victim, each member will be held liable for the commission of a riot.

Use of violence or criminal force by an unlawful assembly in prosecution of the common object is the essence of the offence of Rioting. A mob gathered with an illegal object of assaulting, causing grievous injuries or death of the victim use force and violence. This has warranted the application of Section 146 and the courts in various cases of mob lynching have invoked the said provision against the perpetrators.

Academically, however, there is a difference between Rioting and Mob Lynching and the same is discussed here under:

- i) Genesis: Riots, whether, communal, caste-based, personal or agrarian have their genesis in hatred and enmity between two groups, wherein, members of one

community or group are targeted by members of another community or group. Use of force by an unlawful assembly is deemed to be riot only when it is used for any of five illegal objects laid down under Section 141. Whereas, in Mob Lynching administering justice or inflicting punishment to the one who transgresses law or social norms as the law enforcement is inadequate, forms the genesis.

Application of section 146 in case Mob Lynching can be justified only to the extent of two illegal objects laid down in clauses (iii) and (iv) of section 141 of the I.P.C.[4]

The object of administering justice or inflicting punishment to the transgressors of law or social norm is beyond the ambit of section 141.

ii) Victims: Violence is perpetrated on all the members of the community or group, irrespective of the innocence or guilt of the victims. Collective punishment is meted out during riots. However, in case of mob lynching, the targets are particular individuals who are declared or suspected to have committed a crime or violated a social norm by the mob.[5]

iii) Planning and Preparation: In case of riots, whether, caste-based, agrarian, personal or communal, planning and preparation is necessary. Mob lynching may occur spontaneously or with planning and organization. Planning and preparation are not mandatory in case of mob lynching while it is a necessary ingredient of Rioting.

Due to the conceptual differences between rioting and mob lynching, it is necessary to have a specific definition of mob lynching and to mete out a different treatment in the form of punishment as well as requirements of proof. It is only then possible to secure a conviction in cases of Mob Lynching.

Problem of Proving Common Intention and Common Object

In trying mob lynching cases, section 34 or section 149 is invoked. However, the

application of the same creates a problem of proof for the prosecution.

For the application of section 34, the prosecution has to prove the following:

(i) There was a common intention in the sense of a pre-arranged plan between those involved in carrying out the crime.

(ii) The person sought to be so held liable had participated in some manner in the act constituting the offence.[6]

With regard to mob lynching cases, where the number of perpetrators is very large, it is difficult to prove that they shared the common intention to lynch a person. Besides, direct evidence is not always available. In most of mob lynching cases the evidence has been available in the form of video recording by bystanders or the accused persons. These recordings were small clips which showed only part of the incident that had occurred. It is not a recording of the entire incident. Therefore, the recordings do not give a true picture, especially, with regard to those whose presence is captured and no overt act can be attributed to them. The recording might have captured the presence of an innocent bystander or a passer-by in the mob. Conversely, a perpetrator may claim to be a passerby or bystander where the video recording does not show any overt act done by him. Even where eye-witnesses have been available they have turned hostile during their examination in the court.

The application of section 149 poses similar problems wherein the prosecution is required to prove that a member of the unlawful assembly shared the common object with the other members.

In face of the problems highlighted above, sections 34 and 149 cannot be given an omnibus character and applied in mob lynching cases.

PROBLEM OF CONTAINMENT AND CONVICTION

Between 2015 and 2021, 301 incidents of mob lynching occurred which left 151 dead and 212 injured.[7] In most of these incidents, though the law enforcement machinery reached the scene of occurrence, it failed in containing the large irate mobs from lynching the victims. Even where the victims were rescued by the police, the mobs attacked the police and forcibly took the victims from the custody of the police and lynched them. The law enforcement agencies were outnumbered, ill equipped and left overwhelmed by the large number of perpetrators and the violence unleashed by them. Of the 301 incidents that have occurred, conviction has been secured only in the lynching of Alimuddin Ansari[8], Imtiaz Khan and Mazlum Ansari and Dr. Deben Dutta¹⁰. The conviction rate in mob lynching cases is only 0.99%. Most of the cases are at various stages of investigation and trial. The Pehlu Khan lynching case [11] saw the acquittal of all the accused persons due to lapses in investigation and lack of cogent evidence. The perpetrators of lynching Syed Farid Khan and Mohammad Akhlaq are yet to be punished even after seven years of their ghastly killings.

STATE RELUCTANCE IN ENACTING A CENTRAL LEGISLATION

The Supreme Court of India in *Tehseen Poonawalla v. Union of India and Others* [12] had recommended the Central Government to enact a special legislation to prevent mob lynching incidents in India. The Union Government had set up a committee on 22 July 2018 headed by the then Union Home Secretary, Rajiv Gauba to examine the issue of mob lynching and submit a report to the Group of Ministers (GoM). The GoM was to then study the report and then further submit its recommendation to the Prime Minister. The Report was submitted by Rajiv Gauba Committee in August 2018 to GoM but no

further action was taken. The GoM was reconstituted July 2019.[13] However, no steps have been initiated to bring about a special legislation to combat mob lynching, so far.

While a Central Legislation is awaited, the State Legislatures of Manipur, Rajasthan, West Bengal and Jharkhand have passed bills to prevent mob lynching incidents. The Governors of these states have referred the bills to the President of India for his assent. Pending the assent, these bills are yet to be enforced in the States of Manipur, Rajasthan, West Bengal and Jharkhand.

ASSESSING THE NEED FOR A CENTRAL LEGISLATION TO COMBAT MOB LYNCHING: AN EMPIRICAL WAY

In the light of the inaction on part of the Union Government to come up with a central legislation and the continued incidents of mob lynching, the writers felt the need to carry out an empirical study. This segment of the paper defines the objectives, universe, the sample size, the tools used and the findings of the empirical study.

Objectives of the Paper

- (i) To examine the sufficiency and efficacy of the existing laws to combat mob lynching incidents in India.
- (ii) To assess the need for enacting a Central Legislation to combat mob lynching in India.

Universe

Various stakeholders of the criminal Justice system, namely, Police Officers, Lawyers, Judges and Academicians in the field of law form the universe of the present study. As the Research Scholar resides in Gujarat and due to the challenges posed in the form of pandemic, the respondents from the State of

Gujarat were selected for the empirical research.

Purposive Sampling Method has been employed.

Sampling Technique

The writers have adopted the Non-Probability Sampling Technique. Considering that the study pertains to the criminal justice system, the respondents having experience and expertise in the field of criminal law were selected. Thus, a

Sample Size

The sample size comprised of one hundred and twenty (120) respondents. To have a uniform representation an equal number was drawn from all categories of respondents and the same is depicted in the form of Table 2.

TABLE 2. Sample Size vis-à-vis Respondents

Sr. No.	Respondents	Size
1	Police	30
2	Lawyers	30
3	Judges	30
4	Academicicians	30
Total		120

Tools of Data Collection

A Questionnaire was developed by the writers based on the objectives of the present paper and responses were collected for the same. Considering the challenges posed by the pandemic and the difficulty in approaching the respondents, the questionnaire was made in the form of an Online form and was circulated through social media.

Analysis of Data

Percentage method has been employed to analyze the data collected through the empirical study. The data has been analysed and depicted in the form of Pie Charts and Cross-Tables. Data Analysis of Question No. 1, 'Are the existing laws sufficient to combat Mob Lynching in India?' is presented in the form of Fig. 2.

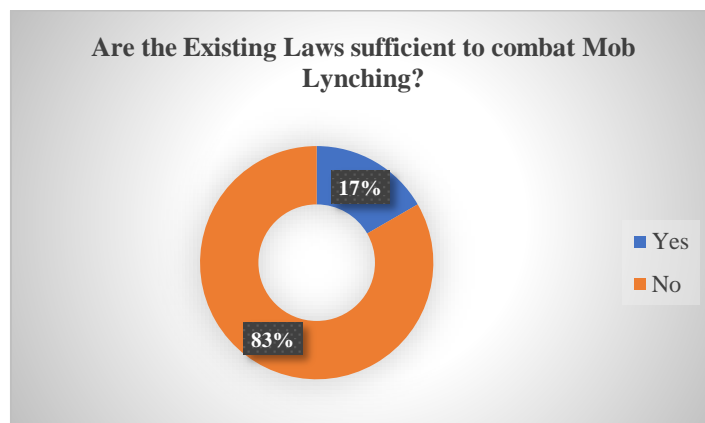


FIGURE 2. Analysis of Data for the question no. 1

Inference: 83% of the respondents feel that the existing laws are not sufficient to combat Mob Lynching in India whereas 17% of the respondents have opined that the existing laws are sufficient to combat Mob Lynching.

A break-up of the responses given by the various respondents as to sufficiency of the

existing laws in curbing Mob lynching incidents has been depicted in the form of Fig. 3.

A break-up of the responses given by the various respondents as to insufficiency of the existing laws in combating Mob lynching incidents is shown in Fig. 4.

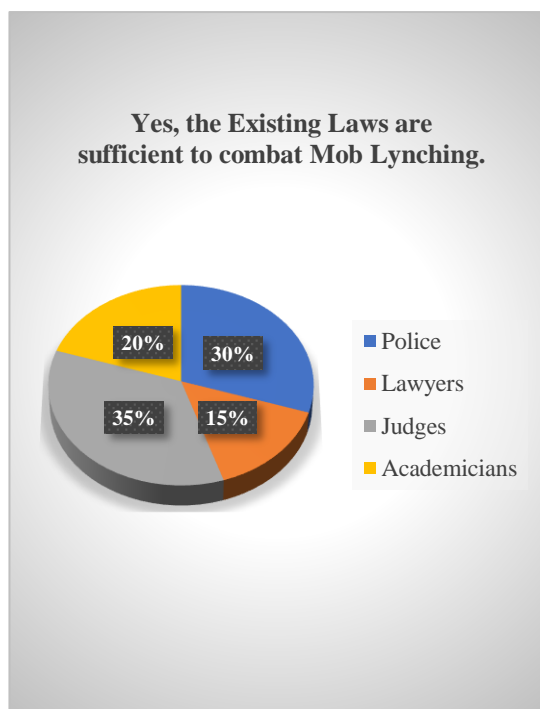


Figure 3. Percentage-wise break-up of the respondents who answered in the affirmative to question no. 1

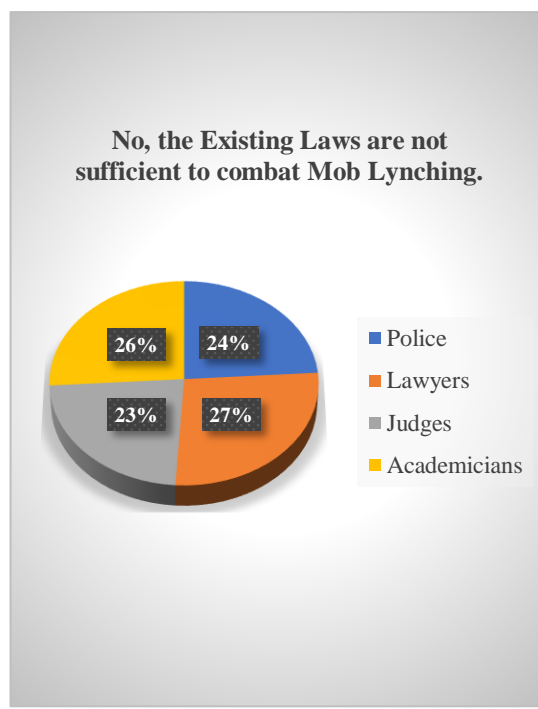


Figure 4. Percentage-wise break-up of the respondents who answered in the negative to question no. 1

Data Analysis of Question No. 2, 'If the answer to question no. 1 is "no" should the Indian Penal Code, 1860 be amended to

define "Mob Lynching" as a specific offence punishable under it?' is presented in the form of Fig. 5.

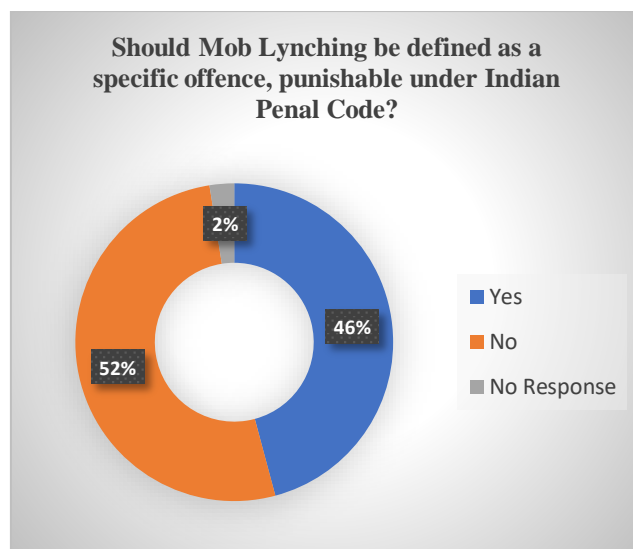


Figure 5. Analysis of data for the question no.2

Inference: 46% of the respondents have opined that Mob Lynching should be defined as a specific offence punishable under the Indian Penal Code, 1860 whereas 52% of the respondents feel that Mob Lynching should not be defined as a specific offence and made punishable under the Indian Penal Code. 2% of the respondents did not respond to the question.

Data Analysis of Question No. 3, 'Will the making of "Mob Lynching" punishable under the Indian Penal Code, 1860 be sufficient to prevent future such incidents?' is presented in the form of Table 3 and Fig. 6. Table 3 shows the break-up of responses, respondent-wise. Fig. 6 depicts the analysis of all the responses percentage-wise.

TABLE 3. Break-up of Responses to question no. 3

Sr. No.	Particulars	Responses					Percentage
		Police	Lawyers	Judges	Academicians	Total	
1	Yes	12	10	8	11	41	34 (34.17)
2	No	17	20	22	19	78	65
3	No Response	1	0	0	0	1	1 (0.83)
	Total					120	100

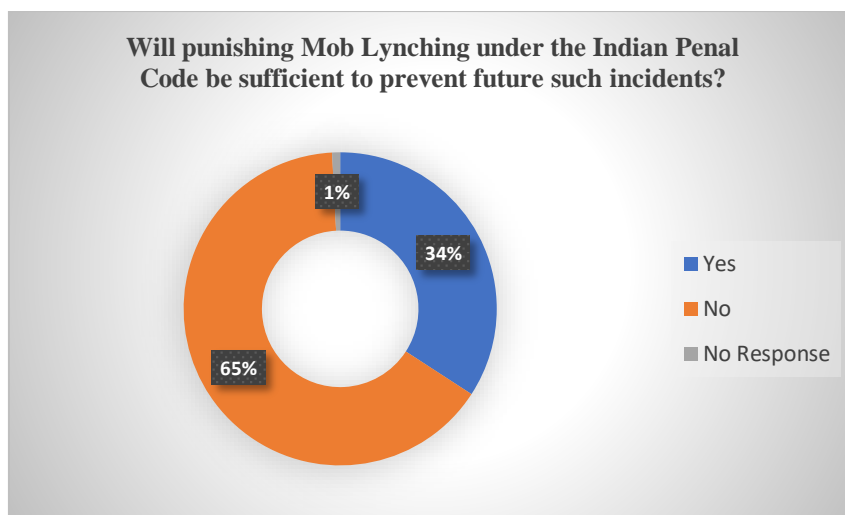


Figure 6. Analysis of data for the question no. 3

Inference: 34% (34.17%) of the respondents have opined that punishing Mob Lynching as a specific offence under the Indian Penal Code, 1860 will be sufficient to prevent future incidents whereas 65% of the respondents said that punishing Mob Lynching under the Indian Penal Code will not prevent future incidents. 1% (1 police officer) of the respondents did not respond to the question no. 3 as he felt that the existing laws are sufficient to combat mob lynching.

Data Analysis of Question No. 4: 'Please specify the reasons for your answer to the above question'. This was an open-ended

question which sought to find from the respondents the reasons as to whether punishing mob lynching as a specific offence under the Indian Penal Code would be sufficient or insufficient to prevent future incidents of mob lynching.

Since the responses were scattered, quantification was not possible. The reasons as to why amending the Indian Penal Code would not help in preventing future incidents have been depicted in the form of Fig 7 and reasons as to why amending the Indian Penal Code would help prevent future mob lynching incidents have been depicted in Fig 8.



Figure 7. Reasons as to why amending Indian Penal Code would not be sufficient to prevent future incidents of mob lynching

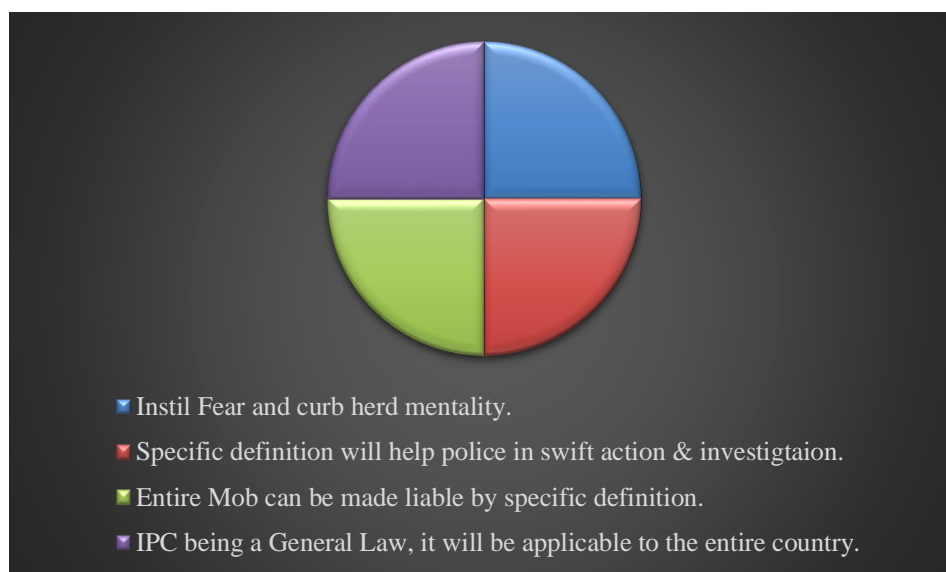


Figure 8. Reasons as to why amending Indian Penal Code would help prevent future incidents of mob lynching

Data Analysis of Question No. 5, ‘If the answer to question no. 3 is “no”, then should a special legislation to combat Mob

Lynching be enacted?’ is depicted in the form Table 4 and Fig. 9.

TABLE 4. Break-up of Responses to question no. 5

Sr. No.	Particulars	Responses					Percentage
		Police	Lawyers	Judges	Academicians	Total	
1	Yes	13	9	12	10	44	37 (36.67)
2	No	17	18	16	10	61	51(50.83)
3	No Response	0	3	2	10	15	12 (12.5)
	Total					120	100

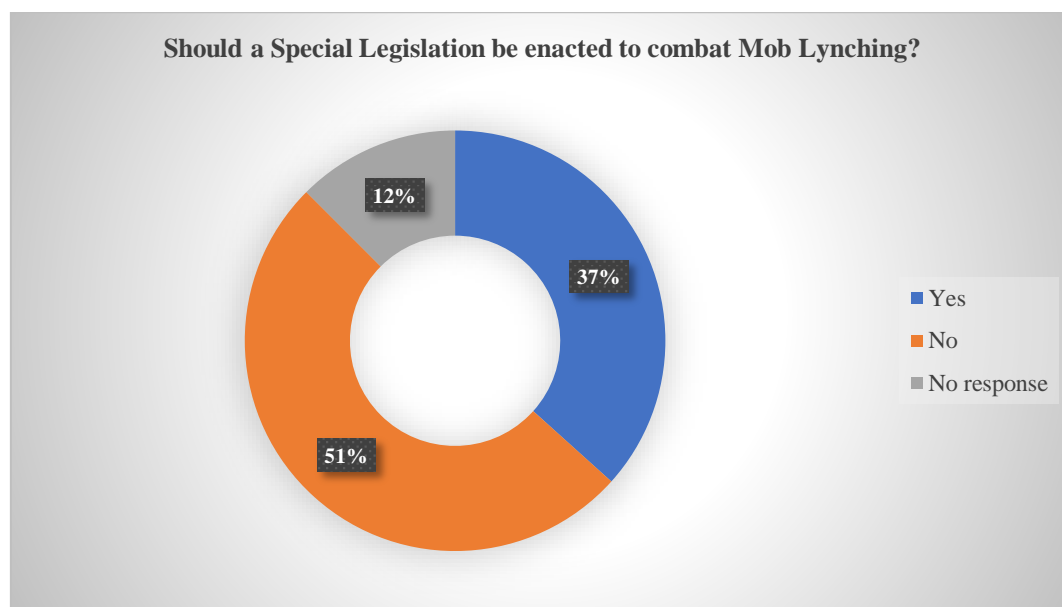


Figure 9. Analysis of data for the question no. 5

Inference: 37% (36.67%) of the respondents have opined that a special legislation should be enacted to combat Mob Lynching whereas 51% (50.83%) of the respondents said that no special legislation should be enacted. 12% (12.5%) of the respondents did not respond to the question no. 5. Those who have not responded had either said that the existing laws are sufficient or that defining 'Mob Lynching' as specific offence under the Indian Penal Code and making it

punishable thereunder would prevent future such incidents. Likewise, there have been some respondents who have said that neither the existing laws nor amendment nor new legislations will prevent mob lynching in India.

Data Analysis of Question No. 6, 'If a special legislation is to be enacted, would a Central Legislation be more effective in preventing Mob Lynching than a State Legislation?' is shown in the form of Fig. 9.

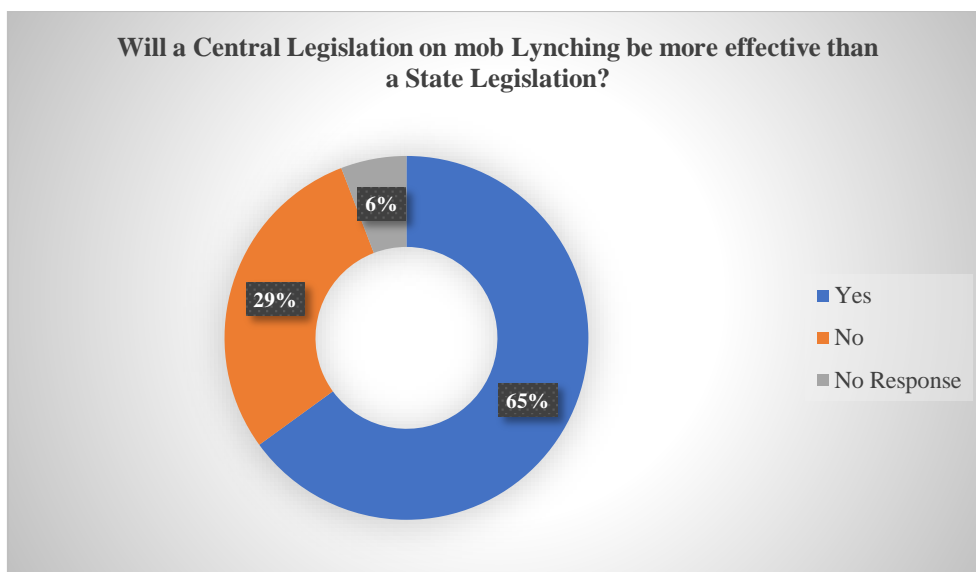


Figure 9. Analysis of data for the question no.6.

Inference: 65% of the respondents have opined that if a special legislation is enacted then a Central Legislation on Mob Lynching would be more effective than a State Legislation whereas 29% (20.17%) of the respondents have expressed the contrary. 6% (5.83%) of the respondents did not respond to the question no. 6. Those who have not responded had either said that the existing laws are sufficient or that defining 'Mob Lynching' as specific offence under the Indian Penal Code and making it punishable thereunder would prevent future such incidents. Likewise, there have been some respondents who have said that neither the existing laws nor amendment nor new legislations will prevent mob lynching in India.

CONCLUSION

Mob lynching in India has become a national phenomenon. The inadequacy of the existing laws is woefully highlighted by the continued occurrence of mob lynching incidents in various parts of the country. The limitations of the application of Indian Penal Code, 1860 and the poor conviction rate in mob lynching cases, pointed out by the writers of the present paper only further exacerbates the deteriorating law and order

situation. These only lay a fertile ground for perpetrators of mob lynching to act with impunity and undermine rule of law. The above conclusion has been supported by the findings of the empirical study wherein eighty-three percent (83%) of the respondents have stated that the existing laws are not sufficient to combat mob lynching incidents in India. The conceptual differences drawn between rioting and mob lynching and the pitfalls identified by the writers in applying sections 34 and 149 to mob lynching cases, show that merely amending the Indian Penal Code would not help in combating mob lynching. This view finds support from the fact that fifty-two percent (52%) of the respondents said that Indian Penal Code should not be amended and sixty-five percent (65%) of the respondents stated that punishing mob lynching under Indian Penal Code would not help in preventing future incidents. The reasons attributed by the respondents only reveal that there is a need to improve policing, overhauling the criminal justice system, eliminate political interference in police investigation and bringing in societal reforms. Due to these reasons, fifty-one percent (51%) of the respondents opined that a special legislation to combat mob lynching is not necessary. However, thirty-seven (37%) were of the view that a special

legislation should be enacted. Sight must not be lost of the fact that the Supreme Court of India had directed the Central Government to enact a special legislation to curb the problem of mob lynching in 2018.¹⁴ Only the State Legislative Assemblies of Manipur, Rajasthan, West Bengal and Jharkhand have so far passed the bills to combat mob lynching. The fear that some States due to political reasons may not pass the anti-mob lynching laws altogether or may pass laws which would serve as mere paper tiger looms large. The continued incidents of mob lynching across the country warrants a uniform central legislation on the subject. These views of the writers have found voice in the form of sixty-five percent (65%) of the respondents advocating a central legislation to combat mob lynching in India.

Time is nigh to enact a central legislation to combat mob lynching in India, lest it will lead to subverting the rule of law and a state of anarchy in the country.

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