A Framework for Countering Mobilised Violence

A Takshashila Institution and Vidhi Centre for Legal Policy Research Report

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Executive Summary

Mobilised violence is detrimental to the democratic fabric of India. It prevents individuals from enjoying their right to speak, move and conduct business freely. It can also cause injuries and loss of life to bystanders, in addition to significant economic costs from a cessation of economic activity and damage to property. In this report, 'mobilised violence' is defined as an act or series of acts of violence committed by a group with the intent of furthering a political purpose.

Existing legal measures have proved insufficient in addressing the problem as incidents of mobilised violence continue to occur. This is largely due to socio-political and economic concerns like societal divisions, but also because of the inability of the legal system to take into account this form of violence and adequately address it. While some laws aim to address mobilised violence by imposing restrictions on hate speech and the formation of associations or assemblies, they are insufficient and misused. The discretion given by these laws to the State is wide and prone to abuse.

The report suggests two approaches to correct some of these flaws:

1. **Regulating groups with a history of engaging in mobilised violence**: This approach seeks to impose costs on groups and their leadership to deter future instances of mobilised violence. However, it does not criminalise the membership of a group itself. It involves the following measures:

    a. Passage of a law that regulates groups that have a documented history of mobilised violence. This law will include procedural safeguards that ensure the law is applied only in relevant cases as well as the consequences for a group that falls within the ambit of the legislation.

    b. Introduction of civil penalties against groups that engage in mobilised violence. This is to ensure that victims of mobilised violence who have suffered damages can seek reparations. It is also to provide a tangible financial deterrent against engaging in future acts of mobilised violence.

    c. Criminalisation of militia training and arms drilling with narrowly defined exceptions. This accounts for the fact that incidents of mobilised violence are often preceded by groups facilitating the training of individuals in the use of arms to increase their ability to cause damage.

    d. Amendment of certain procedural and evidentiary standards that aid law enforcement to better target groups that engage in mobilised violence.

2. **Reframing hate speech under the IPC**: This approach is intended to deter the use of hate speech by individuals to incite violence. It calls for the introduction of narrowly tailored provisions in the Indian Penal Code, 1860 that penalise incitement or provocation of violence, accompanied by a repeal of certain existing provisions that are overly broad in scope and prone to abuse.

In addition to these approaches, it is also necessary to improve the capacity of the State to better address mobilised violence. State institutions are presently ill-equipped to do so. These institutions must be reformed to account for the phenomenon of mobilised violence and formulate appropriate responses. The report recommends that the National and State Human Rights Commissions act as mobilised violence observatories to observe, analyse and disseminate data on mobilised violence, as a starting point for framing policy and legal solutions to the issue. Further, the report recommends reforming the office of the public prosecutor for cases related to mobilised violence to increase transparency and accountability, as well as reduce political interference. Finally, the report proposes reforming the law around sanctions before prosecutions and withdrawal of cases to reduce executive interference in the criminal justice system.

Introduction

The use of violence to achieve political objectives is antithetical to the rule of law. The rule of law in a democracy requires that collective political decisions be guided by constitutional values and be made through democratic processes. However, coercive political pressures can potentially erode the freedom with which people interact with these democratic processes. But, the obliteration of coercive measures is rarely achieved as groups continue to use violence as a coercive instrument for political action against other groups, the public at large, or even the State itself.

The pervasiveness of violence is indicative of both the complicity and failure of State institutions as well as the failure to adequately address the root causes of violence in society. For example, the police force remains an archaic and weak institution due to its reliance on colonial-era laws and a lack of independence from political interference. It is important that efforts be made to reform State institutions like the police forces and the judiciary. That said, this report, while reiterating the necessity for such broader systemic reforms, focuses on more targeted modifications of the criminal justice system to better address mobilised violence.

Part I of this report begins by defining 'mobilised violence'. This is followed by outlining the costs that accrue from mobilised violence in order to show the need for an intervention. These costs include the loss of life, damage to public and private property, cessation of economic activity, and the reputational cost to a region. The report attempts to enumerate and quantify such costs wherever possible in order to demonstrate the scale and magnitude of the problem posed by mobilised violence.

Part II outlines and assesses the incumbent approaches in the criminal justice system to tackle mobilised violence. The current legal framework is inadequate because it does not sufficiently address the involvement of organisations. It focuses largely on individual perpetrators of violence while ignoring the larger political ecosystem of organisations and leaders responsible for supporting and encouraging the violence. Even where legal provisions attempt to address the organised nature of mobilised violence, they are often vague, overbroad and subject to misuse, posing threats to civil liberties such as the rights to speech, assembly, and association.

Part III builds on this analysis and presents recommendations for building an improved legal framework to address mobilised violence. It suggests wide-ranging reforms across the legal system, including reforming ideas of collective responsibility and group liability for violent actions; reframing laws around hate speech and incitement; increasing State capacity to gather, disseminate and analyse data on mobilised violence; and facilitating the creation of an impartial public prosecutor for cases of mobilised violence.

Defining Mobilised Violence

This report uses the term 'mobilised violence' instead of the common term 'mob violence' to highlight the premeditation involved in the instances of violence sought to be targeted. 'Mobilised violence' refers to violence perpetrated by multiple people under the aegis of a group, where the purpose of the violence is to achieve an identified political objective. The defining features of mobilised violence are thus two-fold:

1. The acts of violence are committed by persons who identify as being part of a group (whether such group has a permanent or temporary identity).

2. The violence is intended to achieve a political purpose. The word 'political' is used broadly and 'political purpose' in this context refers to the aim of the group to influence the exercise of lawful rights and obligations by State authorities and private parties. This may be related to issues of linguistic identity, religion, regional sharing of resources, cultural practices, etc.

Acts of violence that do not include these requisite features will not be classified as mobilised violence and the solutions being outlined later in this report will not be applicable to them. Table 1 sets out an illustrative list of violent activities that will fall within the ambit of mobilised violence as defined in this report as well as activities that fall outside this definition.

Covered Under Mobilised Violence	Not Covered Under Mobilised Violence
Violence perpetrated by groups:	Organised crime.
On the basis of religion, ethnicity, culture, language, or for other political ends.	Violence inflicted by instruments of the State over the course of their official functions.
Against artists, including painters, writers, filmmakers, etc. in opposition to their work.	Spontaneous outbreaks of violence. For example, bar fights.
Protesting against State actions, including judicial orders.	Act(s) committed by individuals of their own accord.
As vigilantes in a bid to enforce the law.	Act(s) committed by a group without a political objective. For example, dacoity.

Table 1

Costs of Mobilised Violence

Incidents of mobilised violence result in costs for the society in which they occur. These costs disrupt normal life and deter economic growth, thus hampering the prosperity of a nation. These costs include but are not limited to:

1. Loss of life.

2. Damage to property, public and private.

3. Cessation or stalling of economic activity.

4. Damage to reputation.

The costs are outlined here in the approximate order of their proximity to an incident of mobilised violence and the immediacy associated with the cost. Where possible, this segment also quantifies these costs to provide a better representation of what they entail. This has been done with an emphasis on the most recent data available to ensure relevance.

Loss of Life

Incidents of mobilised violence can claim the lives of innocent bystanders, State officials who attempt to intervene, as well as the participants themselves. While the number of lives lost can vary from one incident to the next, the death of even a single person due to violence is the loss of one life too many.

Such loss of lives results in wider social repercussions, including trauma and financial insecurity faced by the kin and the dependents of the deceased. These second-order effects should be factored in as well.

Table 2 shows an indicative list of incidents from the past three years and an estimated number of deaths they resulted in. These incidents show the propensity for protests to turn violent and result in the loss of lives. They also highlight the wide variance in the motivations behind the protests themselves, the regions of the country that get affected, and the number of casualties.

Year	Incident of Mobilised Violence	Estimated Deaths
2016	Agitations in Haryana seeking reservations for the Jat community	30[1]
2016	Protests over sharing of the river Cauvery's water between Karnataka and Tamil Nadu	2[2]
2017	Protests against the conviction of Dera Sacha Sauda chief Gurmeet Ram Rahim Singh in Haryana	36[3]
2017	Protests for a separate Gorkhaland State in West Bengal	9[4]
2018	Bharat Bandh against a judicial order on the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989	6[5]

Table 2

These deaths can occur as a result of the actions of a violent mob or from the actions of the police who are attempting to quell the violence. For instance, in 2016, the last year for which the numbers are available, 57 civilians lost their lives and 308 civilians were injured due to police firing; similarly, 19 civilians lost their lives and 640 civilians were injured in police lathi-charges.[6]

Damage to Property

Instances of mobilised violence are often targeted at property as well. These properties may be either public property such as forms of public transport, or private property such as shop fronts or private vehicles. When public property is damaged, the cost is often borne by taxpayers as State insurance schemes are unable to bear the expenses of such damages. Damage to shops and vehicles are more likely to be covered by insurance but this will only cover the cost of physical repairs and will not compensate owners for any loss of revenue.

Cessation or Stalling of Economic Activity

An incidence of mobilised violence has a negative impact on the economic activity of a city or a region. As workplaces shut down to avoid being affected by the violence, normal trade and business stalls and the overall economic progress of the country gets adversely affected.

Table 3 sets out the approximate losses that can result in the event of economic activity ceasing for one day at the national level as well as at the level of a few states in the country. These numbers are calculated on the basis of the Gross Domestic Product (GDP) for India and the Gross State Domestic Product (GSDP) for the individual states. They are based on an assumption that the disruption caused leads to a loss amounting to roughly 40% of the GDP or GSDP for a day. Please refer to Appendix-I for details on the methodology adopted.

Scope of the Incident	**Year Under Consideration**	**Loss due to Cessation of Economic Activity Per Day of Disruption (in ₹ crore)**
All India	2018-19	20,500
Karnataka	2016-17	1,200
Maharashtra	2016-17	2,500
Tamil Nadu	2014-15	1,100
Uttar Pradesh	2015-16	1,300
West Bengal	2014-15	900

Table 3

These numbers are significant. To put them into perspective, the loss of economic activity due to cessation of economic activity for one day in the country could fund more than one-third of the total annual expenditure of the Union government on the Mahatma Gandhi National Rural Employment Guarantee Programme (MGNREGA).[7]

Damage to Reputation

In addition to the risks outlined above, incidents of mobilised violence also impact the reputation of the region in which they occur. This cost may not be immediately apparent but over a period of time, it can hinder the nation's growth prospects as investors become wary of regions where violent disruptions are frequent.

One example of this can be seen in a global risk map released by AON, a risk management and insurance firm, in which India is labelled as a high-risk country based on the perception of business risks such as *strikes, riots, civil commotion, and malicious damage*.[8]

Similarly, the Pinkerton-FICCI India Risk Survey 2017 has this to say about incidents of strikes, closures, and unrest:

"...The direct fallout of these incidents is the financial loss incurred by businesses, but the secondary impact to the country's reputation due to adverse media coverage is equally important as it affects its future prospects. Instability directly impacts the market by affecting investor confidence and an increase in the risk premium assigned to securities in the country."[9]

Policy interventions that curb incidents of mobilised violence will help reduce the costs outlined in this segment. However, in order to be sustainable and avoid unintended consequences, they must be designed while keeping in mind certain core guiding principles. These are discussed in the next segment.

Guiding Principles for Legal Intervention

The following guiding principles have informed the recommendations for legal interventions in this report:

1. Respect for civil liberties and human rights must be the foundation of criminal justice reforms

Measures for preventing and redressing mobilised violence, similar to any criminal justice issue, can potentially conflict with legitimate concerns around civil liberties and the fundamental rights of peaceable assembly, association, and free speech under the Constitution of India. Therefore, any interventions, even when they are well-intended, must respect such rights upfront and restrict them to the least possible extent.

2. Regulation is preferable to outright prohibition.

The present legal approach towards mobilised violence is to 'ban' groups which exhibit particular political ideologies or engage in organised violent acts. But simple bans are rarely effective as the banned group can alter its strategy to become more covert or simply reform as a new entity. Thus, it is preferable to regulate these groups and incentivise them to behave non-violently, rather than ban them altogether.

3. Regulation should be proportionate

Even when organisations are regulated, the laws doing so tend to be vague and disproportionate in their definitions. This leads to a significant amount of arbitrariness and abuse in their application. Therefore, any attempt to introduce new regulations should meet the criteria of proportionality and be narrowly and clearly tailored to reduce arbitrariness and abuse.

4. Mobilised violence should not have State sanction

It is inevitable that criminalising or even regulating any activity will drive a portion of it underground. At present, many perpetrators of mobilised violence, whether individuals or organisations, function aboveground and with impunity as the legal system treats the violence as individual offences without accounting for the broader social and political context behind it. This failure to address the underlying causes and actors accords such actions social sanction and encourages further violence. Even though regulation may drive perpetrators of mobilised violence underground, it is an acceptable trade-off to ensure the deterrent value of any punitive measures so that political capital is not gained by openly endorsing and perpetrating violence.

5. Measures should be institution-centric

Mobilised violence cannot be countered if it is viewed as isolated acts of individuals. Any efforts made should address institutional factors responsible for causing such violence. Therefore, the focus throughout this report is to increase the capacity of State institutions to prevent mobilised violence, as well as placing greater responsibilities on private institutions which enable mobilised violence.

Existing Legal Approaches

The law has not remained indifferent to violence committed by groups and there have been attempts in the past to counter it. However, these legal approaches have failed to adequately address this issue.

Article 245 of the Constitution of India, read with the 7th Schedule of the Constitution, empowers both the Union as well as State Governments to make laws on matters related to mobilised violence. These include items like national defence for the Union government and law and order for State Governments (which includes control of the police force as well as provisions relating to criminal offences[10]). Union laws addressing mobilised violence include the Unlawful Activities (Prevention) Act, 1967 (the UAPA). Laws passed at the level of the individual state legislatures include the Karnataka Control of Organised Crime Act, 1999 and the Madhya Pradesh Rajya Suraksha Adhiniyam, 1990.

These laws can broadly be classified into four categories depending on their primary targets: hate speech and incitement, unlawful associations, unlawful assemblies, and finally, liability on organisations for damages. The broad contours of the approaches used in each of these categories as well as their major points of failure are outlined below.

Hate Speech and Incitement

One of the existing legal interventions is to penalise speech that can lead to instances of mobilised violence. The issues with this approach are examined in light of two factors: the sheer number of such restrictions and the threshold they set for penalising a particular speech or expression.

Multiplicity of Legal Restrictions

While Indian laws do not define hate speech, several provisions are ostensibly designed to address the problems arising from it. In the Indian Penal Code, 1860 (the IPC) alone, there are three broad categories of offences that touch upon this subject: offences pertaining to religion, offences against public tranquillity, and offences dealing with criminal intimidation.[11] While the recommendations in this report primarily look at the changes needed with respect to these provisions in the IPC, they are not the only provisions around hate speech under Indian law. Similar provisions can also be found in statutes as disparate as the Representation of the People Act, 1951, the Protection of Civil Rights Act, 1955, and the Cinematograph Act, 1952, among others.[12]

The legal restrictions on speech and expression are not confined to only hate speech either. They are also present in offences such as sedition and criminal defamation. Unlike hate

speech, where it is possible to argue for a restriction on the basis of preventing harm to others, the rationale behind these offences is difficult to justify.[13]

Low Thresholds for Restrictions

More problematic than the crowded legislative framework is the substantive content of such restrictions. The language used in the IPC's provisions against hate speech is broad, giving the State the license to use them even when the facts of a case may not warrant an intervention.

The provisions, as they exist now, criminalise vague acts such as promoting disharmony or feelings of enmity, hatred, or ill-will between different groups,[14] outraging religious feelings by insulting a religion or its beliefs,[15] deliberately wounding someone's religious feelings,[16] or publishing or circulating content that incites one community to commit an offence against another.[17]

One of the solutions to ambiguity arising from such expansive language is to rely on judicial interpretation. The track record of the judiciary on this count is mixed. While the courts have over the years narrowed down the applicability of the provisions by insisting on the element of intent, they have also consistently upheld the constitutionality of the provisions themselves.[18] A more promising development on the subject came from a challenge to a provision under the Information Technology Act, 2000 (the IT Act), where the Supreme Court held that there must be a proximate connection between the act being censured and the grounds for a reasonable restriction under the Constitution.[19]

In the meantime, the lack of absolute clarity has contributed to these provisions being abused to curtail legitimate exercises of speech and expression. There are several instances of artists, journalists, and writers being charged for having violated these provisions.[20] Even if these cases result in the eventual acquittal of the person being targeted, the costs of being imprisoned and navigating a slow judicial process are severe enough to cause lasting damage to an individual.[21] This creates a chilling effect on the exercise of the fundamental right of speech and expression in the future, which is, in and of itself, worthy of being addressed.

Laws Targeting Unlawful Assemblies

'Public order' is the ground under Article 19(3) most frequently invoked to reasonably restrict the freedom to assemble peacefully and without arms. A majority of these laws are the legacy of colonial policing systems. Many of them aim to address mobilised violence by targeting assemblies of people, usually defined as five or more people. These laws have a strong preventive component in that they give discretion to the government to restrict these assemblies *before* they have committed any crime. Despite the fact that these laws were drafted to prevent protests against a colonial regime, the Supreme Court has upheld their

use, as well as the wide powers they grant to the State to police assemblies. For example, provisions in the Bombay Police Act, 1951 requiring that all 'public processions' obtain permission from the Commissioner of Police were upheld by the Supreme Court.[22]

Possibly the most widely used provision for the regulation of assemblies is Section 144 of the Code of Criminal Procedure, 1973 (the CrPC). Section 144 provides wide discretion to the State to make prohibitory orders preventing "obstructions", or "annoyances", the definitions of which include riots and other forms of violence. Orders under Section 144 are limited to a particular geographical area. Any assembly that gathers in that area during the validity of an order is automatically deemed to be an 'unlawful assembly' under the IPC. Some orders may also stipulate requirements such as the need for prior permission from the promulgating officer prior to assembling in an area. Section 144 is the primary tool employed by police as a response to riots and other forms of mobilised violence.

Section 144 has been upheld under the 'public order' exception in Article 19(3), where the Supreme Court has held that restrictions on freedom of assembly are 'reasonable' due to the existence of sufficient procedural safeguards in the provision.[23] The Supreme Court has stated that anticipatory actions or restrictions on certain types of behaviour were sometimes needed to ensure that public order is maintained under Section 144 as 'public order' was synonymous with public peace and tranquility.[24]

However, the Supreme Court has also recognised the scope for the misuse of the provision and the necessity to have more detailed guidelines on the applicability and scope of such orders.[25] Section 144 is primarily meant to be applied in emergencies but this requirement is frequently not met. In reality, it operates as a blanket prohibition which can be applied in an overly broad and discriminatory manner. The section provides substantial discretion for the State to employ prohibitory orders and it is often the case that it is employed to stifle legitimate assemblies and gatherings by denying them permission. This abuse is compounded by the fact that not only is legitimate activity by people suppressed, it is criminalised as non-compliance with Section144 is a criminal offence. For example, the continuous misuse and promulgation of Section 144 by the Delhi Police to supress protests like the Jan Lokpal protests in Central Delhi has recently prompted the Supreme Court to direct the Delhi Police to formulate guidelines on its use.[26]

While laws like Section 144 may doubtless be necessary tools for the police to employ under certain conditions, the concerns outlined above prompt a rethink over the manner in which unlawful assemblies are sought to be controlled by the State. In cases where the State feels a preventive action is necessary, the regulatory intervention must be proportionate, narrowly tailored, and thoroughly justified on specific and limited grounds.

Aside from Section 144, the judiciary itself has actively curtailed the freedom of assembly where it has felt that processions or demonstrations must be curtailed in the public benefit. In one case, the Kerala High Court outlawed the practice of 'bandhs', which aim to stop economic activity for political messaging.[27] The Court attempted to draw a distinction between a general strike and a 'bandh', and held that political parties and organisations could not paralyse the fundamental rights of citizens unsympathetic to their cause under the garb of freedom of assembly. Though it was eventually upheld by the Supreme Court,[28] the rulings remain unclear and their application inconsistent, given that there is no legal definition of a 'bandh', nor any well drawn distinction between a bandh and a strike.

Laws Targeting Unlawful Associations

Another strategy that laws use to deal with mobilised violence is to target associations or groups that engage in it. These laws prescribe a procedure by which the government can notify such associations as 'unlawful' and ban their activities or issue prohibitory orders for their regulation.[29] This can include making membership of these organisations a punishable offence, regardless of whether the member being charged has himself engaged in any mobilised violence.

A number of these laws have been examined by the Supreme Court of India on the touchstone of the freedom of association. One category of laws that has attracted special attention has been anti-terrorism laws like the UAPA, the Prevention of Terrorism Act, 2002 (the POTA) and the Terrorist and Disruptive Activities (Prevention) Act, 1987 (the TADA). These laws, which allow the State to ban 'unlawful' or 'terrorist' organisations, have, at various times, been upheld by the Supreme Court on the ground that the 'sovereignty and integrity of India' mentioned in Article 19(4) is a valid restriction on the freedom of association.[30] Similarly, laws allowing State Governments to ban organisations are also frequently utilised to target political outfits which ostensibly target interference with 'public order', such as the Criminal Law Amendment Act, 1908 (CLA Act).

However, the Supreme Court has also gone into the question of whether these laws meet the criterion of 'reasonableness' under Article 19 of the Constitution of India. One metric that the Court uses is whether the law is procedurally fair and is adherent to the principles of natural justice. In VG Row v Union of India,[31] the Court struck down the provisions of the Criminal Law Amendment (Madras) Act, similar to the CLA Act, on the grounds that organisations that were declared unlawful under the Act were not provided an opportunity to defend themselves before an independent judicial authority. Conversely, in the subsequent case of Jamaat-E-Islami Hind v. Union of India[32] concerning the UAPA, the Supreme Court held that the presence of the statutory tribunals in the UAPA was a sufficient procedural safeguard that satisfied the 'reasonableness' requirement under Article 19(4).

However, despite such examination by the judiciary, these laws suffer from many infirmities and, even though some of these have been recognised by courts, they have not been addressed. These stem from being overly prone to abuse in multiple ways or not being effective in addressing mobilised violence.

Broad Discretion

The wide discretion provided under the language of such laws allows the Union and State Governments to criminalise associative activities and stifle civil liberties, including legitimate political activity and dissent. Laws like the UAPA enable the government to 'ban' and criminalise associative activity on extremely vague grounds like "disclaiming, questioning, disrupting or intending to disrupt the sovereignty and territorial integrity of India".[33] The Supreme Court has however, read down the provisions of the UAPA that automatically criminalise membership. It created a requirement for 'active membership' from someone on the rolls of an unlawful or terrorist organisation in order to secure their conviction.[34] However, the application of this standard is unclear, leading to misapplication of the UAPA; this is now being re-examined by a larger bench of the Supreme Court.[3536]

The power to ban organisations under the CLA Act has also been criticised for being misused to stifle dissent, as well as for the lack of evidence supporting its justification of addressing mobilised violence and disturbances of public order.[37] The discretion and misuse of these laws implies that their stated purpose of improving public order by targeting unlawful associational activities is not being met.

Insufficient Procedural Safeguards

The capacity for the wide discretion provided to the government by laws like the UAPA to 'ban' and criminalise associations to be abused is something that has not gone unrecognised. Many of these laws are designed with procedural safeguards such as having a judicial inquiry when an association has been banned so that all the concerned parties get an opportunity to present their case before an independent judge. But even where laws prescribe for a judicial review of banning orders, the procedure under which such review is undertaken is not transparent and its independence is circumspect. A study on the tribunals under the UAPA by the People's Union for Democratic Rights (PUDR), for example, found that the tribunals are not providing an effective check on the Union government's power to ban organisations and proscribe membership of such organisations, leading to the misuse of the statute.[38]

Ineffectiveness

These laws are premised on the assumption that the power to ban associations or criminalise associative activities will lead to a decline in such associations. The administrative and policy response to instances of mobilised violence is therefore to simply utilise these laws to ban

the group(s) responsible. For example, the Ministry of Home Affairs issued a document entitled 'Guidelines on Communal Harmony' that espouses the use of the UAPA to ban groups causing communal disaffection.[39] Given the potential for misuse of these laws, this is extremely problematic as there is little evidence to support the assumption that banning associations leads to a reduction in mobilised violence. A study of banned terrorist organisations in Australia, Canada, US and UK indicates that these organisations continue their activities by changing their names or organisational structures and suggests that banning such organisations does not have much impact on associative activities between terrorists.[40]

In light of the concerns over civil liberty and efficacy raised by existing provisions, it is recommended that the laws that ban associations and proscribe their membership, should be repealed. Instead, there should be a legal framework to adequately monitor and regulate the behaviour of groups and their members in order to prevent mobilised violence.

Liability for Acts of Mobilised Violence

The laws discussed in the previous section seek to address the activities of certain groups deemed to be inimical to public order or national security. As has been outlined, they generally seek to do this by banning these groups and criminalising membership to them. However, these laws do not lay out a framework for assigning civil or criminal liability to these groups for specific instances of mobilised violence, particularly when they result in loss or damage to life and property, whether public or private.

One law which seeks to address this gap is the Prevention of Damage to Public Property Act, 1984 (the PDPP Act), which is a Union law that provides for criminal liability for damage caused to public property. The law imports the offence of mischief (which is defined as causing damage to property) from the IPC and uses it to assign liability for this damage. However, the law only provides for assigning individual liability for causing damage and does not impose any form of collective liability on groups which may engage in such actions.

Research has consistently shown that in most cases of mobilised violence, there is a chain of events leading up to the actual instances of violence.[41] This chain of liability leads to the leadership of such organisations who are often responsible for organising and instigating mobilised violence without directly participating in it themselves. Most offences, under both general and special laws, target only the actual participants that perpetrate acts of mobilised violence and are unable to include the leadership who are ultimately responsible for organising and controlling the use of violence by members of their organisation. This encourages organisations and their leadership to gain political capital through the use of mobilised violence without any fear of being reprimanded themselves. Given the nature and position of the leaders of organisations or associations, it is justifiable to place a higher burden of responsibility on their speech and actions.

There has been no reform under Indian laws to ensure that the leadership and organisers of mobilised violence are made culpable for the actions of their subordinates. The Supreme Court has recognised that instances of violence that lead to the destruction of public property are often instigated or carried out at the command of certain organisations or individuals. But the Court's suggestions to reframe evidentiary burdens are incomplete and must be carefully reconsidered, along with introducing new approaches towards the liability of organisations and their leaders.[42] While the Court's other recommendations mostly related to increasing police and judicial capacity to counter crowd violence, there is little analysis of the systemic causes of mobilised violence and little engagement on how to dismantle organisational structures which lead to mobilised violence.

Another major obstacle in assigning criminal liability to those responsible for instigating or organising mobilised violence is the existence of sanctions and withdrawals under the CrPC. For example, Section 196 of the CrPC requires prior sanction by the State or the Union Government before any court can take cognisance of any of the offences promoting enmity between different communities.[43] These procedures, which were put in place to prevent frivolous or vexatious prosecutions, enable arbitrary executive interference in the prosecution of offences. This is especially problematic because, given the inherently political nature of mobilised violence, it is often the case that the State or, at the very least, State actors are complicit in such offences.

While there is a requirement that the relevant State agency must 'apply its mind' when refusing or granting sanction for prosecution, there is no requirement to follow the principles of natural justice and provide an opportunity to the complainant or the accused to make their case. A refusal to grant sanction by the relevant State agency acts as an absolute bar against prosecution for that instance of mobilised violence. More importantly, a judicial authority cannot direct the relevant State agency to grant or refuse a sanction, but only to reconsider its decision.[44] The Second Administrative Reforms Committee in its Fifth Report (on public order)[45] and Seventh Report (on capacity building for conflict resolution)[46] has recommended that this requirement of sanction prevents the criminal justice system from prosecuting those responsible for mobilising violence, and hence, should be removed.

An Assessment of Existing Approaches

The current framework of laws set in place to deal with mobilised violence are inadequate. Many of them were designed in a society where blanket bans and blunt State action were par for the course. Their design and scope accord too much discretion to State agencies to apply them against activities that do not warrant legal intervention. As a result, they have proven both ineffective and prone to abuse, which is only compounded by the fact that the judiciary has had a mixed record of protecting civil liberties while interpreting such laws. Further, despite the judiciary's best intentions, the laws on liability still do not sufficiently hold

instigators and organisers of mobilised violence accountable for the actions of their followers. These multiple failures in design, whether it be sheer ineffectiveness, propensity for abuse, or gaping lacunae in application, are an indication that legal reform is necessary.

Proposed Approaches

It has been established that not only is mobilised violence a phenomenon whose costs to society are high, but also that the legal measures in place to deal with it are either flawed or extremely susceptible to abuse or both. The obvious question is then - what measures would sufficiently address the issue? But before that can be answered it is necessary to first reiterate the two essential features of mobilised violence as per the definition of this report, i.e., that the violence is perpetrated by a group and that it is in furtherance of a political purpose. Examining these two features in detail will provide the necessary conceptual clarity to tailor any subsequent approaches to most effectively combat mobilised violence.

While the requirement of a group is essential for mobilised violence to indeed be 'mobilised', the characteristics of groups can vary greatly. The 'group' may be a monolithic organisation which has formally recognised chapters in multiple locations, or it may be a loose collection of a few individuals who have decided to band together to achieve a common political purpose. The level of **structuring of the group** is a crucial factor in both its functioning and its response to government actions. For example, in the former case of the monolithic group, the arrest of its leadership is unlikely to have as debilitating an effect as it would on the loosely held collection of individuals. This variance can be attributed to several factors, such as organisational structures of hierarchy that provide easy replacements or the number of assets the organisation holds.

The other essential feature of mobilised violence is that the violence must be in furtherance of a political purpose. In some cases, the violence itself, coupled with the identity of the perpetrators and the victims, is enough to convey the political purpose sought to be achieved. But it is quite frequently the case that some form of **expression** accompanies the mobilised violence, either before or after it has occurred. This may be in the form of speech, song, clothing or other symbols, but the end product is always some form of **expression to instigate mobilised violence**.

The proposed approaches described in this section target these two features of mobilised violence. They are not mutually exclusive, and while there may be some overlap, they are intended to dovetail with one another to help address mobilised violence. They include two primary legal interventions to target mobilised violence and three reforms to increase the institutional capacity to better address mobilised violence.

Approach 1: Assigning Liability to Groups Engaging in Mobilised Violence

One of the major flaws in the existing legal framework is its failure to assign liability to groups that foster and encourage mobilised violence. There are three advantages to hold such groups responsible for acts of mobilised violence instead of their individual members.

The first is that a group is likely to have more money and assets than its individual members, making it easier to assign the quantum of pecuniary liability necessary to cover compensation for damage caused by mobilised violence. The second is that it is practically easier for law enforcement to focus its attention on one group rather than treat all of its members in their individual capacities. The third, and perhaps most important reason, is that a group not only has visibility but is a legal entity that enjoys perpetual existence detached from its members. This incentivises groups to encourage mobilised violence when there is scope to further its political purpose by doing so as the incarceration of its members, even its leadership, will not affect the organisation itself.

As such, any attempt to assign liability to groups in such cases should incorporate the following measures:

1. Creation of a new law that regulates groups engaging in mobilised violence without criminalising membership of the group itself.

2. Introduction of statutory civil liability for damage caused due to mobilised violence.

3. Imposition of restrictions on militia drilling and arms training.

4. Revise evidentiary standards and substantive offences to target leaders.

Introduction of a Law to Regulate Groups Engaging in Mobilised Violence

The Approach in Brief

This approach envisions the creation of a new law that targets groups engaging in mobilised violence. This law will:

1. Target only the groups and not their members. A group will be brought under the scope of the law only if its members engage in violence or its leaders instigate or actively condone it.

2. Once targeted, the group will be treated differently under the eyes of the law - any events it seeks to conduct will be more regulated and its leaders will be subject to a combination of strict and vicarious liability.

Basis for the Approach

As has been outlined, groups do not themselves face liability for mobilised violence committed by their followers. This proposal envisages a legal framework which identifies groups whose members commit violence in furtherance of its objectives and then subjects the group to fines, or its leaders to imprisonment, if its members commit further violence.

The Proposed Intervention

The law being proposed here should be predicated on the use of a Watch List - once a group is on the list, it will be treated differently under the eyes of the law. A few crucial steps emerge in this process:

1. The qualification criteria that must be met for a group to be placed on the Watch List.

2. The actual process by which a group gets placed on the Watch List.

3. The effect that getting placed on the Watch List will have on the group with respect to its lawful activities.

4. The higher standards of behaviour expected from the group and its members.

5. The penalties the group will face if such standards of behaviour are broken or its members commit mobilised violence.

The first two steps of the law are extremely critical and due caution must be taken when detailing them. If they are improperly drafted, the potential for the law to be abused by discriminating against otherwise law-abiding groups will be vast. The primary consideration in the remaining three steps will be to ensure the effectiveness of the law while still respecting the constitutional rights of the targeted groups and its members.

Stage One: The Qualification Criteria

The grounds on which a group may be identified as perpetrating mobilised violence are crucial. They must be framed broadly enough so that groups that engage in mobilised violence do not fall out of the ambit of the law, but still be narrow enough that groups that do not engage in mobilised violence do not get caught in the law's framework. The key challenge will be to link the actions of a group's members with the group itself - otherwise groups will simply disavow members that commit mobilised violence in order to escape liability.

As such, the following criteria are proposed as qualifications for a group to be put on a Watch List:

1. Where 10 or more members of the group have been charged with or convicted by a court of competent jurisdiction, for engaging in criminally violent behaviour that is in consonance with the stated political purposes of the group; or

2. Where leaders of the group threaten, condone or instigate criminal behaviour that is in consonance with the stated political purposes of the group.

To clarify, the words 'criminal' and 'criminally violent' behaviour mean any behaviour that is currently an offence under Indian law. It will be sufficient if either of the two criteria are met for a group to be put on the Watch List. The requirement of the members being charged with criminally violent behaviour was deemed to be sufficient as the filing of a chargesheet occurs at the culmination of an investigation and is generally expected to be accompanied by the requisite proof of the charges. The primary consideration behind choosing chargesheets as the stage of the criminal trial is that it occurs comparatively sooner than a full conviction – which can often take years - allowing the group to face liability much sooner after the mobilised violence occurs. The procedural safeguards mentioned in Stage Two are intended to limit the capacity for abuse of using chargesheets, which are sometimes drafted without the requisite attention or due thought.

Some further clarifications of the terms used are also necessary:

1. A person can be identified as being a 'member of a group' if he or she:

    a. Is on the roll or register of the group; or

    b. Repeatedly attends meetings of the group; or

    c. Has identified himself or herself as being part of the group to other people; or

    d. Is paid by the group or its leaders.

2. 'Stated political purposes' will be determined on the basis of:

    a. Any publication issued by the group.

    b. Public statements made by its leaders.

Stage Two: The Process of Getting Placed on the Watch List

The police will play the primary role of collecting the evidence of whether a group meets the criteria specified in the first stage. However, systemic issues exist with respect to the police

that can leave them susceptible to external political interference. Given that mobilised violence is inherently political in nature, it is desirable that the discretion accorded to the police is as limited as possible.

Given this, it is proposed that a Mobilised Violence Vigilance Team presided by a former judge of a High Court, be in charge of submitting applications to put groups on the Watch List. The additional members of this team should include a senior police officer, a home secretary and a lawyer, preferably a public prosecutor. The Mobilised Violence Vigilance Team should meet at least once every six months, and any of its members should be able to convene a meeting to decide whether to investigate a group.

On the point of who the Mobilised Violence Vigilance Team sends the application to, it was felt that the final decision of whether a group should be put on a Watch List be made by the judiciary and not the executive. The executive is likely to biased either because putting groups on the Watch List will ease the enforcement of law and order or because the political objectives of the ruling dispensation will influence the decision.

Given all these considerations, the following procedure is suggested:

1. The Mobilised Violence Vigilance Team will file an application to a Judicial Magistrate. This application should contain a police report or final report containing evidence of why the group should be put on the Watch List.

2. The Magistrate will issue a notification to the group and its leaders and request the group to present a case of why it should not be put on the Watch List. This notification will also be accompanied by a request that the group submit a complete list of its members (including the designations of its leaders) and assets, as well as its articles of incorporation if it is incorporated.

3. The Magistrate will hear both sides before deciding whether to put the group on the Watch List. This determination must be made within a period of three months from when the hearing begins. A group can only be put on the Watch List for a period of three years. It can only be renewed if the police file fresh evidence that the group is still conducting the stipulated kinds of illegitimate activity as specified in Stage One.

4. The group may appeal the decision of the Magistrate to the High Court. However, the High Court shall be prevented from staying the decision made by the Magistrate until the appeal has been fully heard. An exemption to this may be made if the group is prima facie not deserving of being put on the Watch List.

Stage Three: The effect that getting placed on the Watch List will have on the association with respect to their lawful activities

Once the group is placed on the Watch List, it must immediately do the following:

1. Submit a security deposit. This deposit will be used to pay for any damages the group causes subsequent to being placed on the Watch List.

2. Submit the following information to the relevant police station:

    a. A complete list of its members. This list must also identify the upper management of the group and its leaders.

    b. Articles of Association, charter, trust deed or any other relevant legal document that incorporates the group as a formal entity. Where the group is not formally incorporated and registered, it must do so immediately.

A list of all assets owned by the group.

Failure to submit this information will render the group and its leaders liable to fines or imprisonment.

Further, any public gathering that the group conducts after being put on the Watch List must have the following:

1. Prior permission from the police.

2. A declaration by the group's leaders that they or their members will not engage in criminally violent behaviour and that, if such behaviour occurs, they will take full liability for their actions or those of the members of the group.

3. A minimum of one police officer for every five people expected at the gathering. Where the number of people attending the gathering exceeds 1,000, presence of the Rapid Action Force shall be required.

4. At least two police appointed videographers to document the gathering.

Stage Four: The higher standards of behaviour expected from the association and its members

The purpose of the law is to place a higher standard of behaviour on the group due to the past behaviour of its members. As such, the group will be guilty of Egregious Behaviour if:

1. The group, or any of its members, is found guilty of either of the behaviours stipulated in Stage One.

2. The group continues to keep on its rolls any members that are convicted of violent criminal behaviour.

3. During any gathering convened by the group, its members cause, or instigate to be caused, any injury to any person or property.

Stage Five: The penalties the association will face if such standards of behaviour are broken.

In order to hold the group guilty of Egregious Behaviour, the Mobilised Violence Vigilance Team on its own accord, or at the direction of the Judicial Magistrate, should conduct an investigation and submit a report to the Magistrate. If the group is found guilty of Egregious Behaviour, the Judicial Magistrate will be empowered to impose any combination of the following penalties as he sees fit:

1. The group will be fined. This amount will not be deducted from the Security Deposit and will remain separate from Penalty No. 5.

2. The leaders will be under orders to report to police regularly in certain circumstances (such as before or after events by the group or its affiliates/rivals). This may include restrictions on travel.

3. The leaders may be jailed for at least two years and at most seven years.

4. The group will be barred from enjoying any tax exemptions/benefits under State law. Where it is enjoying such benefits from the Union government, relevant information can be passed to the appropriate tax authorities.

5. Where the group has been responsible for any damage to person or property, their security deposit will be utilised to pay compensation. Where the security deposit is not enough, the assets of the group may be seized in order to secure such compensation for any victims.

6. The group may be liable to a ‘public censure’, namely, a public declaration of the wrongfulness and blameworthiness of the actions of the organisation, issued by a judicial authority like a court or an executive authority like a State agency.

Introduction of Civil Liability for Destruction of Property

Approach in Brief

This approach seeks to provide a financial deterrent to groups organising or instigating mobilised violence. This deterrent will be in the form of establishing the civil liability of groups where the mobilised violence instigated by that group results in damage to property.[47] In order to achieve this, amendments are required to the Prevention of Damage to Public Property Act, 1984 (the PDPPA).

Basis for Approach

The principle that employers may be vicariously liable for the acts of their employees, or that principals may be liable for the acts of their agents, is well established in common law. This principle of attributing liability understands that when an individual performs an action on the instruction of another, both that individual and the person from whom he received instruction are responsible for the consequences of that action. There are two distinct advantages for using vicarious liability to hold organisations financially responsible for mobilised violence committed by their members. The first is that organisations are often in a better position to compensate claims for damages than individuals and the second is that this higher burden of responsibility on organisations for the conduct of their members encourages more oversight of the organisation over its members. However, civil liability for organisations currently only extends to incorporated entities under the Companies Act, 2013, or through specific statutes such as the Punjab Prevention of Destruction to Public Property Act, 2014. Vicarious liability of organisations under common law is not well developed by courts in India.

Imposing effective civil liability on the perpetrators of mobilised violence is likely to have a deterrent effect on such activities.[48] The existing mechanism for civil liability relies largely on private actors claiming tortious damages in civil courts. However, this process may not be appropriate in cases of multiple victims and perpetrators. More importantly, the process for claiming damages under the common law of tort is extremely cumbersome and is not often pursued as a course of action. As such, it is unlikely to lead to successful claims for the large amounts necessary to compensate for the damage to property caused by mobilised violence which will, in turn, have a scant deterrent effect on further instances of mobilised violence.

Proposed Intervention

The law on civil damages is normally based on restitutionary principles. However, the Supreme Court has recognised that in egregious cases, such as wilful damage to public property, the court may impose punitive or exemplary damages as well. It has also recognised the need for special procedures to expedite the recovery of damages from those who destroy public or private property.

In doing so, the Supreme Court proposed the following mechanisms:[49]

1. The High Courts or Supreme Court should take suo motu action and establish a mechanism to investigate and quantify the damages and award compensation.

2. A sitting judge of the High Court should be appointed as a claims commissioner for the quantification of damage.

3. If the nexus between the damage and the perpetrators is established, the principles of absolute liability will apply to both the perpetrators as well as the organisers of the demonstration.

4. Exemplary damages should then be awarded to deter future cases of violence.

The process of imputing civil liability should be tied in with schemes for compensation to victims who have suffered damages due to mobilised violence. There exist certain statutory mechanisms for making such claims for compensation.[50] Compensation may also be available to the victims of specific offences under the IPC,[51] but these claims cannot exceed the fines stipulated for those offences - which are usually inadequate. Section 357A of the IPC also prescribes that State Governments should set up victim compensation schemes for victims of offences under the IPC. But several victim compensation schemes suffer from serious drawbacks, such as limitations on the amount of compensation that can be claimed or the circumstances in which compensation is available. Under the Karnataka Victim Compensations Scheme, for example, the mechanism is only available in case the perpetrator cannot be traced.

In light of the above lacunae in the existing legal mechanisms, it is recommended that the PDPPA be amended to include civil liability for damage caused during mobilised violence and a procedure for claiming such damages from the perpetrators of the offence. The amendments to the PDPPA should achieve the following:

1. The PDPPA should be capable of being used to prosecute cases of damage to both public and private property. Damages in these cases should be calculated on an exemplary or pecuniary basis, in order to establish a higher deterrent effect.

2. The process for claiming compensation in such cases should be through a specialised court or body established to assess damages and assign liability. In the present system, the recovery of damages is done on an ad-hoc basis by claims commissions appointed by a High Court or the State Government. The law must prescribe that every instance of damage caused by acts of mobilised violence should be referred to a specialised court that is assisted by a claims commission. This specialised court should also be

supported by an independent prosecutorial and investigative wing, with the court also maintaining separate judicial functions.

3. The liability to pay compensation should be jointly and severally borne by the actual perpetrators of the violence as well as the group itself. This will include specific categories of leadership of the group. The liability of the leadership may be subject to specific exemptions. For example, the damage to property may not have been a reasonably foreseeable consequence of the actions of the group and its members or that the leaders had done everything in their capacity to prevent the damage.

4. The failure to recover claims from the perpetrators of the violence should not lead to the loss of compensation for victims. It is important to note that the State also shares culpability due to its failure to protect citizens from the effects of mobilised violence. The State's responsibility to compensate victims of riots should also be codified in law and not be implemented only through ad-hoc schemes created in the aftermath of incidents of mobilised violence. The recovery of damages from perpetrators should be adjusted against claims made against the State by the victims. Additionally, the State should incentivise insurance for damages caused by acts of mobilised violence by allowing insurance companies to recover claims against the government, as has been done in the UK's Riot Compensation Act of 2016.

5. Laws providing for collective liability of inhabitants of an area for riot damages caused in that area, such as under the Karnataka Police Act and the Karnataka Prevention of Destruction and Loss of Property Act, should be repealed.

Criminalisation of Militia Drilling and Arms Training

The Approach in Brief

Criminalising the acts of mass drilling with arms or arms training, with narrow exceptions that require groups to obtain prior permission.

Basis for Approach

There have been several instances of mass drills and weapons training being carried out by specific organisations.[52] These drills have utilised small arms or arms outside the scope of regulation under the Arms Act, 1959, and are carried out for the purposes of intimidating a particular community or as preparation for committing acts of mobilised violence. Arms training and mass drills are often precursors for acts of mobilised violence.

However, these drills cannot be penalised unless the conditions under Section 144A of the CrPC and Section 153AA of the IPC are satisfied. Under Section 153AA, the carrying of arms

for use in a mass drill or procession is only penalised where it is in contravention of any order issued by an executive magistrate under Section 144A of the CrPC. Under Section 153A(1)(c), participation in such a drill or training program requires the prosecution to prove that such activity was both for the purpose of using criminal force against a specific community, and that the activity caused a sense of fear or alarm amongst the members of the community being targeted.

The Proposed Intervention

In order to reduce executive arbitrariness when preventing armed drills or training, it is recommended that all acts of mass drilling with arms or arms training be made a punishable offence. There should also be no requirement to prove that the intention behind conducting the training was to target a specific community nor should there be one to prove that that community did indeed feel a sense of fear. The effect of this could be tempered by making the possession and use of arms subject to narrowly drawn exceptions (for example, training for the purposes of education or sport). The law should require the procurement of a permission or license for any organisation looking to conduct drills or weapons training which fall under the broad definition of arms under Section 153AA of the IPC. This is in line with the original intent behind the drafting of Section 144A of the CrPC; that of preventing communal mobilised violence.[53]

Target Leaders and Organisers of Mobilised Violence

The Approach in Brief

Substantive offences under criminal laws like the IPC are not designed to target the organisers and instigators of mobilised violence. In addition, supplementary laws on evidence and criminal procedure make any such prosecution difficult. Given this, changes must be made to existing procedural and evidentiary standards in order to make it easier to hold people responsible for inciting and organising mobilised violence liable for their actions.

Basis for the Approach

There is a large body of jurisprudence to draw from with regard to liability of leaders of an organisation. For example, in the field of international criminal law, the doctrine of 'command responsibility' ensures that superior officers in a position of responsibility may face liability for the acts of their subordinates, notwithstanding the lack of requisite intention for the commission of a war crime.[54] This doctrine is however more suited to organisations with clearly and formally defined organisational structures like national armies. As such, it would need to be suitably tweaked to civilian associations conducting mobilised violence as they exhibit more informal structures of *de facto* rather than *de jure* control.[55]

The Supreme Court has recognised that violence that leads to destruction of public property is often instigated or carried out at the command of certain organisations or individuals.[56] These actions by leaders would usually be covered under the ambit of laws concerning abetment of offences or conspiracy. However, the Court has, on various occasions, also recognised that it is difficult to procure direct evidence on specific statements or decisions made by these individuals and prove that the actions of their followers were intended to cause mobilised violence.[57] The Court then made some suggestions on how the PDPPA could be amended to hold these leaders liable.

One of the Court's suggestions was that in cases where leaders of associations have issued calls for mobilised violence that have led to damage to property, these leaders should be legally presumed to be guilty of abetment. It also suggested that before this legal presumption can be made, the prosecution should first establish certain foundational facts, including:

1. The association, or individuals in a position of leadership, made a statement calling for violent action against specific individuals or communities or the public in general, and

2. That such statement resulted in the commission of an offence by the members of an unlawful assembly against the individual or community specified in the statement or the public in general.

Where both of these criteria are fulfilled, the Court may draw a presumption that the organisation and its leadership (or anyone in charge of the operations of such organisation), intended to abet the offences so committed by the unlawful assembly. This presumption may be rebutted and should also be subject to exceptions such as the leaders of that organisation not being aware of the call for action or having exercised all due diligence to prevent the commission of such offences. This is similar to the vicarious liability of directors under various provisions of company law.[58]

The Proposed Intervention

The use of presumptions can aid the prosecution of the organisers of mobilised violence by removing the requirement to adduce direct evidence showing the chain of liability.[59] However, even if the defence is accorded a chance to argue that the exceptions are applicable, the use of presumptions must be carefully drawn and circumscribed. This is because it departs from the norm of placing the burden of proof on the prosecution to demonstrate that all the necessary elements of an offence are present, which is an important safeguard to preserve the presumption of innocence of an accused.

At the same time, incitement or abetment to mobilised violence differs from a number of situations in which legal presumptions are used. It is generally done in the presence of eye-witnesses, which can make up for potential gaps in the availability of direct evidence, unlike

presumptions used in other offences like abetment to suicide of a recently married woman.[60] Therefore, the law must provide for strict criterion on the basis of which such a presumption of abetment may be rebutted. It may, however, be useful to utilise presumptions to target criminal conspiracies, where such direct evidence may not be available and only circumstantial evidence (from which the presumptions may be inferred) is available.[61]

Alternatively, the law can adopt differing standards of culpability for offences that take into account the position of responsibility that persons enjoy. The IPC already adopts a standard of 'rash and negligent' acts for certain offences, where the very nature of the act being committed requires a higher duty of care. For example, refusing to take sufficient care of dangerous objects in one's possession is treated as criminal negligent conduct.[62] The IPC already utilises a duty of care requiring a person accepting the benefits of a riot to take measures to prevent it.[63] However, no quantum of fine is prescribed under this offence.

In this vein, Section 153 of the IPC penalises people who 'wantonly' commit an act with either the intention of causing a riot, or knowing that it may result in one.[64] The use of the word 'wantonly' implies both a standard of conduct that should be adhered to and the attraction of an offence of negligence when such a standard is violated.[65] However, this provision is only applicable if the act that is 'wantonly' committed is also an illegal act. As such, it is recommended that Section 153 be expanded to remove this limitation to cover all acts which the accused knows are likely to lead to mobilised violence.

This standard of criminal negligence can also be applied to impose a greater duty of care upon the organisers of demonstrations who hire persons to carry out mobilised violence or gather and distribute arms (of any nature) for this purpose. This would require legislative amendments to those provisions under the IPC which seek to target the organisation of people for the purpose of committing mobilised violence. But given that the standard of culpability required under these offences would be reduced, there must be a corresponding reduction in the punishment for such offences as well.

Electoral laws can also play a role in ensuring that these actions and events are not capable of being used for political mileage during elections, as is often the case with mobilised violence.[66] Section 8 of the Representation of the People Act, 1951, recognises certain circumstances which should disqualify individuals from holding a political office in the Union or State Governments. It is recommended that the offences relating to inciting or organising mobilised violence should be made a part of this provision.[67]

Approach 2: Refining the IPC's Position on Hate Speech

The Approach in Brief

This approach recommends the introduction of new provisions in the Indian Penal Code, 1860 (the IPC) to address incitement and provocation of mobilised violence.

In order to be truly effective, this change must be accompanied by:

1. The repeal of certain existing provisions in the IPC. This includes the provisions discussed earlier with regard to promoting disharmony or feelings of enmity, hatred, or ill-will between different groups, outraging religious feelings by insulting a religion or its beliefs, deliberately wounding someone's religious feelings, or publishing or circulating content that incites one community to commit an offence against another.

2. An examination of wider systemic changes that might be necessary to make the criminal justice system more efficient.[68]

Basis for the Approach

The Constitution of India guarantees to every citizen the right to freedom of speech and expression.[69] However, as with the right to freedom of assembly and the formation of associations or unions, this is not an absolute right and the legislature can impose reasonable restrictions on the basis of a few predetermined grounds, including public order and incitement to an offence.[70] The scope of such narrow exceptions should extend to cases where speech and expression are used to incite or provoke mobilised violence.

The Law Commission of India (the LCI) has recommended legislative intervention in its report on curbing hate speech in the country. In particular, the LCI recommended the addition of two additional provisions to the IPC.[71] These provisions, the features of which are discussed in the next segment, will be used as a template with further modifications to make them more effective.

Features of the LCI's Recommended Provisions

1. The scope is more narrowly defined than under existing provisions. For example, the provisions penalise the advocating of hatred that causes incitement to violence or the use of gravely threatening or derogatory speech or expression to provoke the use of unlawful violence. These are more specific than promoting disharmony and enmity, or hurting religious sentiments.

2. There is a shift from a focus on groups to individuals. The existing offences of promoting disharmony or enmity, or hurting religious sentiments are made in reference to group identities. The LCI's recommendations do away with this.

3. There are more grounds on the basis of which the offence might be committed. The provisions include identities not covered earlier, such as sex, gender identity, sexual orientation, disability, etc.[72]

4. The proposed provisions aim to address two effects of hate speech: one, incitement or provocation of violence; and two, the intent to cause fear or alarm in a person through one's actions. The latter was included by the LCI to target instances where hate speech does not incite violence but has the potential to marginalise a section of the society or an individual.[73]

5. While not reflected in the provisions themselves, the LCI report also outlines the criteria for determining whether a particular act ought to be penalised.[74] This is a welcome development and, if these criteria are included as part of the amendment, they will help clarify the scope of the law even further.

Additional Criteria for Drafting New Provisions

The LCI's recommendations are a step in the right direction. They correct many of the infirmities displayed by existing provisions and present a solution that is better suited to protect legitimate exercises of the right to freedom of speech and expression.

That said, the recommended provisions can be refined even further by applying the following criteria:

1. The proposed provisions should focus on only one issue, namely that of tackling mobilised violence. While it is important to have legal protections against discrimination, including discrimination arising out of hate speech, it is best to provide for them as separate provisions.

2. The proposed provisions can do away with specifying particular group identities as the grounds on which hate speech will be criminalised. Thus, the provisions can act to penalise any speech that incites violence or has the potential to provoke violence against anyone else.

3. The criterion mentioned above is a more radical departure from the language used in the LCI's recommendation. A more conservative alternative would be to make the list of grounds inclusive.[75]

4. The punishment for the offences must be designed to act as an effective deterrent. This can be achieved in two ways: one, any conviction under these provisions must result in an automatic disqualification for holding political office;[76] and two, the quantum of the fines should not be nominal amounts or capped but should instead be left to the courts to determine at their discretion.

Refining the LCI`s Recommendations

Based on the discussion above, there are two alternative ways of modifying the LCI`s recommendations:

1. Omit all references to grounds on the basis of specific group identities.

2. Retain the group identities but make them an inclusive category.

In addition, as with the LCI report, the provisions should address two distinct scenarios: one, cases where violence has resulted due to the incitement; and two, cases where violence is likely to result due to a provocation. These two variations of the amended provisions are set out below.

Excluding the Requirement of Group Identities

> "153 C. Whoever advocates hatred by words either spoken or written, signs, or other visible representations, that causes incitement to violence shall be punishable with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine."
>
> "505 A. Whoever uses words, or displays any writing, sign, or other visible representation which is gravely threatening or derogatory with the intent to provoke the use of unlawful violence shall be punished with imprisonment for a term which may extend to one year and shall also be liable to fine."

Making the Requirement of Group Identities Inclusive

> "153 C. Whoever on grounds of religion, race, caste or community, sex, gender identity, sexual orientation, place of birth, residence, language, disability or tribe *or any other ground whatsoever*, advocates hatred by words either spoken or written, signs, visible representations, that causes incitement to violence shall be punishable with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine."
>
> "505 A. Whoever on grounds of religion, race, caste or community, sex, gender, sexual orientation, place of birth, residence, language, disability or tribe *or any other ground*

whatsoever, uses words, or displays any writing, sign, or other visible representation which is gravely threatening or derogatory with the intent to provoke the use of unlawful violence shall be punished with imprisonment for a term which may extend to one year, and shall also be liable to fine."

Application Framework

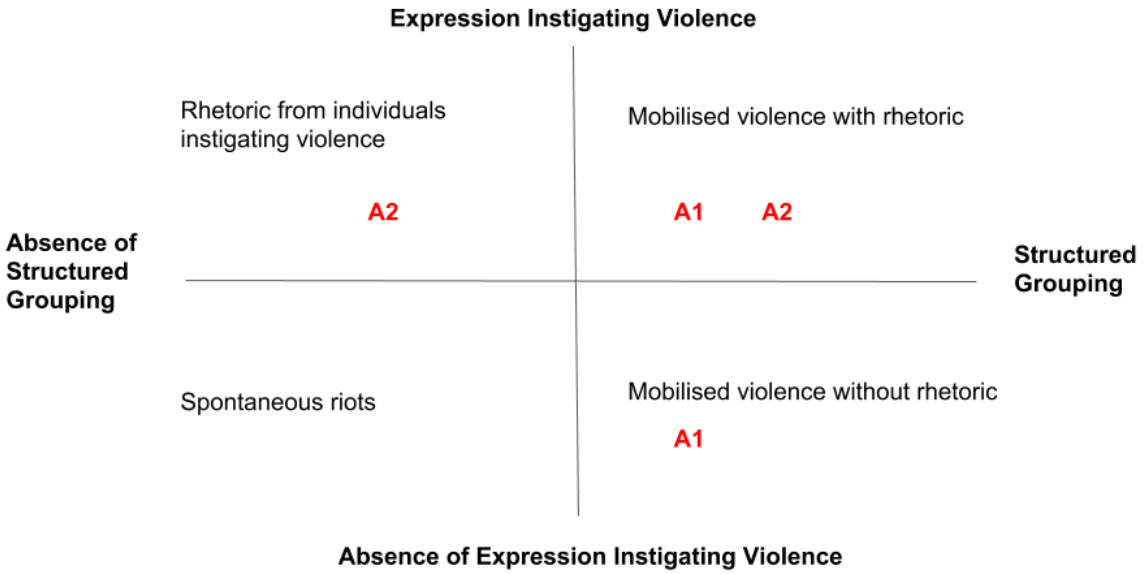
Approaches 1 and 2 (A1 and A2) outline two solutions for addressing mobilised violence. However, they do not by themselves offer guidance on when they ought to be applied and how they interact with each other. A framework that provides this instruction in a clearly identifiable form will be useful for implementing the two solutions.

The key to creating this framework is to understand that mobilised violence is not homogenous and can occur in a variety of factual scenarios. As mentioned before, these scenarios arise because of the existence of one or both of the following factors:

1. **Structured grouping** - where the violence being perpetrated is the deliberate act of an organised group.

2. **Expression instigating violence** - where the violence is instigated by speech made in public.

These factors are adopted as the two axes of the application framework. The framework then identifies which approach should be adopted depending on the presence or absence of these two factors.



A brief summary of the framework is set out in Table 4, with illustrative examples for each quadrant.

Name of the Quadrant	Approach to be Applied	Example
Mobilised violence with rhetoric	Approaches 1 and 2	Includes incidents where violence is perpetrated by a mobilised group and is accompanied by speech instigating or condoning such violence. The protests against the movie Padmaavat are an example of this, where members of a particular group staged violent protests against the movie's release and this was accompanied by threats of violence against individuals associated with the movie.[77]
Mobilised violence without rhetoric	Approach 1	Includes incidents where the violence is not accompanied by rhetoric and where the group in question lets its actions serve as the political message. Some of the instances of mob lynchings fit within this category.
Rhetoric from individuals instigating violence	Approach 2	Includes incidents where prominent public figures make incendiary speeches that lead to or have the potential of leading to violence. An example of this are the comments made by a well-known public figure that he would have beheaded people who did not sing a particular song if the law of the land permitted it.[78]
Spontaneous riots	Neither of the approaches	Includes incidents where neither a structured group nor expression instigating violence are involved. The offence of affray under the IPC is an example of this.[79]

Table 4

Increasing Institutional Capacity

Improve the Collection, Analysis, and Dissemination of Data on Mobilised Violence

The National Crime Records Bureau (NCRB) is the department of the Government of India responsible for the collection and publication of statistics on crime. NCRB data is the principal source for both governments as well as civil society for information on mobilised violence. However, the collection of data is flawed both in terms of the reliability of primary data as well as the methodology used to construct the statistics.[80] One much-criticised component of the methodology is the 'principal offence' rule which the NCRB uses when inputting crime data: it only counts the offence with the maximum sentence recorded in each First Information Report (FIR) filed with the police.

The most recent annual report on crime statistics released by the NCRB classifies offences related to mobilised violence in specific categories of 'riots' and 'offences promoting enmity between different groups'. The data for the year 2016 reports that 61,974 cases of riot were registered.[81] However, these statistics differ widely from statistics on the same subject of communal riots in Parliament. The Ministry of Home Affairs, in response to a Lok Sabha question, reported only 703 'incidents' of communal violence in that period, which is a variance too stark to simply be explained by the presence of non-communal riots.[82] The difference in the data indicates the unreliability of the statistics upon which the government ideally frames its policy interventions to address mobilised violence, as well as conceptual and definitional failures to analyse mobilised violence.

Besides governmental sources, empirical evidence on mobilised violence is fragmented and incomplete. One of the most comprehensive sources on such violence is the data on communal violence collected by Varshney and Wilkinson from 1950-1995, by examining a single national newspaper.[83] Such reliance on secondary sources suffers from serious inconsistencies and the authors themselves acknowledge the difficulties of such an approach.

Aside from the lack of primary data on mobilised violence, there is no governmental authority responsible for systematically analysing and studying instances of mobilised violence in order to assist police authorities or policy makers in responding to such violence. Under the present system, ad-hoc judicial inquiries are held under the Commissions of Inquiry Act, 1952, for the study of specific instances of large-scale violence. However, the Inquiries Commissions serve overlapping investigative functions with the police, and also end up being besieged by issues of bias in functioning and appointments or lack of transparency in their functioning as well as in their findings.[84]

The National Human Rights Commission established under the Protection of Human Rights Act, 1993, also has the authority to make inquiries into specific instances of violations of human rights.[85] However, no efforts are taken to extrapolate learnings from these inquiries into larger policy objectives on understanding and responding to the causes of mobilised violence. No specific agency is tasked with understanding social unrest or mobilised violence, even though multiple programmes to combat terrorism and left wing extremism have been initiated and are high on the priority of successive governments.[86]

Mobilised violence is an endemic and systemic issue in India. Empirical data and systematic analysis of the causes and effects of violence is necessary for the prevention and reduction of mobilised violence. Under the current system, it is near impossible to identify the success of targeted legal interventions or understand the shortcomings of the legal system in controlling mobilised violence. In the absence of a comprehensive government system for collecting, analysing and disseminating such information, clarity in policy making and targeted interventions suffers.

Mobilised Violence Observatories

As per the Secretariat of the Geneva Declaration, an armed violence monitoring system is "an intersectoral system that a) gathers data on an ongoing and regular basis, b) systematically analyses the data, including the nature of the armed violence, and c) disseminates the information with a view to informing evidence-based programming and policy-making to prevent and reduce armed violence."[87]

Similarly, the Organisation of American States (OAS) defines a violence observatory as "a government agency or office designed to collect, process, and analyze data on public security along with its various actors, with a view to drawing up reports to help understand the current situation and developments in the area of public security, as well as challenges and progress achieved, so that they can be used as inputs for planning and implementing public policies on security at national and international level."[88]

Both the violence monitoring systems and observatories fulfil a similar function - to accurately record and disseminate information on violence as well as provide analysis for empirical decision making. Implementing such a system in India is imperative both for framing policy on mobilised violence as well as to ensure that specific interventions made in risk-prone areas are active and not reactive.

Any monitoring agency or observatory should be both independent of any specific governmental department and able to coordinate and harmonise data and disseminate information among different agencies. In India, the NCRB and State bureaus are under the aegis of the Ministry of Home Affairs or respective State departments, whose functions are too broad to effectively perform the functions of a violence observatory. It is recommended

that the role of the National and State Human Rights Commissions be expanded by statutorily mandating it to act as a violence observatory to gather, analyse and disseminate information on mobilised violence, on similar lines as suggested by the OAS Guidelines.

Appointment of Special Public Prosecutors

The office of the public prosecutor is an important part of the criminal justice system. To be effective and to maintain credibility, a public prosecutor must function freely and independently of both the government and the investigating agency.[89] There are three essential aspects to ensure the independence of a prosecutor: the process by which they are appointed, the level of oversight and remuneration while they are in office, and the process by which they are removed.

The appointment of public prosecutors is provided for under the Code of Criminal Procedure, 1973 (the CrPC). Two broad means of appointment are envisaged:

1. Direct appointment by the executive after a consultation with a judicial authority, typically the High Court or a Sessions Court.

2. Appointment from a cadre of prosecuting officers.[90]

In addition, an amendment to the CrPC in 2005 introduced the concept of a Directorate of Prosecution to oversee the functioning of the public prosecutors in a State.[91] While this setup seems good on paper, the actual implementation is questionable. Weak drafting of the relevant CrPC provision, coupled with the power of State Governments to move amendments to it, because of its concurrent status in the Constitution, have resulted in a sub-optimal status quo. This is seen in the way judicial consultation has been done away with in some jurisdictions, the appointment from cadres has been restricted to lower level positions such as assistant prosecutors, and how the the Directorate of Prosecutions has been placed under an executive authority.[92]

Given the sensitivity of cases concerning mobilised violence and the possibility of executive interference in the legal process, it is important to take steps necessary to insulate and empower the prosecutor. One means of doing this is by mandating that the prosecution of every case of mobilised violence be led by a special prosecutor.

The following factors must be considered while appointing the special prosecutor:

1. The appointment must be made by the Advocate-General or with oversight from the judiciary. The executive may provide its opinion on candidates but should not have the power to take the final call or veto any candidate.

2. The special prosecutor should work directly under the aegis of the office of the Advocate-General and should be entitled to remuneration that is commensurate with the importance of the work being handled.

3. The grounds for the removal of a special prosecutor should be codified, with sufficient oversight from the Advocate-General or the judiciary. Such removal should not be at the sole discretion of the executive.

Reduce Executive Interference in Prosecution of Offences

Section 196 of the CrPC requires the sanction of the Union or State Government prior to the prosecution of certain offences, including offences under Section 153A (dealing with hate speech). The requirement of State sanction to prosecute certain instances of mobilised violence has proved problematic as it is often the case that State actors are complicit in, or at the very least condone, such behaviour. At the same time, the presence of a sanction can prevent malicious prosecution by State authorities or private complainants. It is recommended that executive interference in the prosecution of such offences be limited by introducing greater procedural safeguards to be followed for granting or denying sanction.

Generally, the procedure for granting sanction is provided for in the Transaction of Business Rules for the relevant government. In Karnataka, for example, Rule 30 of the Transaction of Business Rules requires that the sanctioning authority must be the Minister in charge of the relevant department (in this case, the Home Department). Guidelines for making the sanctioning authority more independent were issued by the Supreme Court in the context of the Prevention of Corruption Act, 1988, that required a consultation with the Central Vigilance Committee and the CBI for the assessment of the sanction.[93] A similar procedural requirement could be introduced for the State Government by amending Section 196 of the CrPC to require that sanctions be passed in consultation with an independent body such as the Karnataka Lokayukta. The Transaction of Business Rules should also be amended to introduce procedural safeguards including time limits within which an order must be assessed.

Similar to Section 196, Section 321 of the CrPC also allows for arbitrary executive interference in criminal prosecutions. This section allows the public prosecutor to withdraw the prosecution of any person from any offence, with the consent of the court. The application for withdrawal is usually done at the behest of the Union or State government. The Srikrishna Committee Report and the Second Administrative Reforms Committee have both noted that mobilised violence has strong links with State sponsored violence, and there is a high possibility of misuse of such provisions despite the requirement of a judicial review.[94] The Supreme Court laid down guidelines for a court to follow when providing the mandatory consent required under Section 321, holding that it requires the trial court to ensure that any

such application is in 'the public interest' and in good faith.[95] However, the assessment of such factors remains discretionary and is amenable to misuse. It is recommended that Section 321 should not apply in cases of offences regarding mobilised violence.

Table of Recommended Legislative Interventions

The recommendations from this report are set out in Table 5 below. The implementing agency for each recommendation has been made in reference to the State of Karnataka.

S. No.	Recommendation	Required Intervention(s)	Implementing Agency
1.	Introduce a new law that regulates groups and not their members.	1. Repeal laws criminalising mere membership of a group. In particular, repeal Section 10 of the UAPA and Section 16 of the CLA Act, 1908, which criminalise mere membership of a banned organisation. 2. The passage of a new State law to regulate groups responsible for mobilised violence.	Karnataka State Legislature

2.	Introduce statutory civil liability for damage caused as a result of mobilised violence.	1. Repeal provisions under the Karnataka State Police Act, 1963 and the Karnataka Prevention of Destruction and Loss of Property Act, 1981 which provide for collective fines upon the inhabitants of an area. 2. Amend the Karnataka Prevention of Destruction and Loss of Property Act, 1981 and the Central Prevention of Damage to Public Property Act, 1984 to: a. Introduce statutory civil liability on the organisations and leaders of organisations responsible for engaging in acts of mobilised violence. b. Establish a special court or tribunal to establish civil liability in cases of mobilised violence and act as a claims commission for granting compensation to victims.	The amendments to the Karnataka Prevention of Destruction and Loss of Property Act may be made by the State Legislature. The amendments to the Central Prevention of Damage to Public Property Act may be made by the Parliament. The specialised court for processing civil claims for damage caused by mobilised violence may be established within High Courts or District Courts.

3.	Restrict militia drilling and arms training.	Amend criminal laws to ensure that conducting militia drilling or arms training is an offence, subject to strict exceptions. This requires – 1. Repealing the provision mandating a public notice by an executive magistrate as a prior requirement to sanction arms training or militia drilling, under Section 144A of the CrPC and Section 153AA of the IPC. 2. Amending Section 153A(1)(c) of the IPC to remove the requirement of intent to cause fear among a community; and that the activity was for the purpose of use of force against a religious, racial, language or regional group or caste or community. Further, introducing narrowly drawn exemptions and the requirement of police authorisation prior to holding such drilling exercises or arms training.	Karnataka State Legislature
4.	Revise evidentiary standards and substantive offences to target leaders	1. Introduce a presumption as to intention to commit a criminal conspiracy under Section 120A of the IPC, by leaders of organisations found to be engaged in mobilised violence. This presumption must be narrowly drawn to require that certain foundational facts be established on the existence of a	The amendments to the IPC and the Indian Evidence Act, 1872 may be made by the Karnataka State Legislature. Amendments to the Representation of the People Act, 1951 will have to be made

		criminal conspiracy to organise and commit mobilise violence within an organisation. 2. Amend Section 153 of the IPC to introduce the offence of criminal negligence of an organisation or its leadership for an act or omission under circumstances in which the leaders ought to have known that mobilised violence would occur. 3. Amend Section 8 of the Representation of the People Act, 1951, to disqualify individuals found to have organised or participated in offences related to mobilised violence from holding political office for a specified term.	by the Parliament of India.
5.	Refine the scope of hate speech under the IPC	1. Introduce two narrowly drafted provisions in the IPC which correspond to penalising such speech which has led to violence or which is likely to provoke violence, respectively. The victims under these provisions can be individuals or a group. 2. Repeal certain existing provisions related to hate speech, including Sections 153-A, 295-A, 298, and 505 of the IPC.	Karnataka State Legislature

6.	Improve collection, dissemination and analysis of data on mobilised violence	Amend the Protection of Human Rights Act, 1993, to explicitly mandate the State and the National Human Rights Commissions to function as mobilised violence observatories and collect, disseminate and analyse data on mobilised violence.	The amendments to the Protection of Human Rights Act must be passed by the Parliament. The State and National Human Rights Commissions will be responsible for acting as mobilised violence observatories. The operational procedure may be prescribed by rules made by the respective State governments or the Union government.
7.	Appointment of special public prosecutors	Amend the CrPC to make it mandatory for a special public prosecutor to be appointed in cases related to mobilised violence. The amendments must provide for oversight over the functioning of the prosecutor to the office of the Advocate-General, including over the appointment and removal.	Karnataka State Legislature

8.	Reduce executive interference in prosecution of offences	Amend provisions under the CrPC which allow for arbitrary executive interference in the prosecution of offences, particularly in cases of mobilised violence. In particular: 1. Amend Section 196 of the CrPC to require that the sanctioning authority must include an independent agency like the office of the Karnataka Lokayukta or some similar office. 2. Amend the Karnataka Transaction of Business Rules to prescribe timelines and processes for granting of sanction by the sanctioning authority. 3. Amend Section 321 of the CrPC to repeal the withdrawal of prosecution in cases concerned with mobilised violence offences.	The amendments to the laws may be made by the Karnataka State Legislature. The State Government and an independent agency may be made responsible to act as a sanctioning authority in cases of sanction required for mobilised violence offences under Section 196.

Conclusion

The phenomenon of mobilised violence should not be allowed to continue unchecked. It is damaging to the state of the rule of law in India and comes with significant costs to society. Unfortunately, incidents of mobilised violence often do not result in punitive consequences, thus encouraging repeat offences. Much of this failure to punish the perpetrators is attributable to fundamental failures in India's justice delivery system. But this report also shows how the gaping deficiencies in the framework of laws are also to blame as these laws are either ineffective or prone to abuse.

The recommendations to improve this legal framework involve both tweaks to existing legal solutions and new legal approaches, but they all call for a more innovative shift in the way mobilised violence is addressed. Regardless of the nature of the recommendation, one of the primary principles followed in this report is to widen the gaze of law beyond the low-level enforcers to the people and organisations responsible for instigating and fostering mobilised violence. The accrual of costs to these individuals and organisations should act as a disincentive against committing such acts with impunity in the future.

The recommendations in this report represent a step forward from the status quo. However, it must be reiterated that there are other systemic problems in the police and the judiciary at present and solving these issues will be equally crucial to addressing mobilised violence and, for that matter, crime at large.

Beyond the narrow prism of law enforcement, it is also necessary to understand that many of the underlying issues at the heart of mobilised violence are societal in nature. Legal solutions will never be the panacea that will rid India of mobilised violence altogether. Instead, they will only act as a stop gap to minimise the frequency of acts of mobilised violence and alleviate the damage when they occur. Relying on only legal measures will likely prove counterproductive as stopping political expression, no matter how violent it is, without trying to redirect it into peaceful and constitutional channels will only lead to more violence.

Appendix I - Methodology for Estimating Losses

The losses resulting from the cessation of economic activity have been calculated as a percentage of the GDP at the national level and the GSDP for the individual states.

The following methodology was adopted to estimate these losses:

1. Identification of the GDP and GSDP figures for India and the individual states respectively. The Union Budget 2018-19 sets out the estimated GDP for India.[96] The Accounts at a Glance published by the office of the Comptroller and Auditor General of India (CAG) set out the GSDP figures for various individual states.[97]

2. Derivation of the GDP and GSDP figures for one day from the numbers available for an entire year.

3. Calculation of the loss caused by subjecting the one-day GDP and GSDP figures to a multiplier of 0.4, i.e., arriving at an estimation that corresponds to 40% of the one-day GDP and GSDP figures.

A Note on the Multiplier

It is unlikely that an incident of mobilised violence, even if its effects are widespread, will bring the economic activity to a complete halt. Certain forms of economic activity will continue to operate.[98] For instance, a large segment of the informal sector is likely to remain unaffected by the incident. It is also possible that industries operating in the formal sector will require their employees to work on an alternative date to recoup the productivity lost due to the incident.

After accounting for such eventualities, this report has adopted a multiplier of 0.4 to arrive at a conservative estimate for the losses. The numbers arrived at by using this methodology are similar to the ones released by industry bodies and associations after recent instances of bandhs and strikes.[99]

Appendix II - Compendium of Laws

Unlawful Activities (Prevention) Act, 1967 (UAPA)

The primary legislation used to regulate organisations deemed as threats to national security is the UAPA.

The precursor to the UAPA was the Terrorism and Disruptive Activities Act, 1985 (the TADA) and the Prevention of Terrorism Act, 2002 (the POTA). However, both POTA and TADA have since been repealed, making the UAPA the primary anti-terrorism law.

The UAPA's approach to regulate violent organisations allows the State to deem such organisations as 'unlawful associations' or 'terrorist organisations'. Unlawful associations are defined as organisations whose object is an activity deemed unlawful by the UAPA and also organisations that abet such activity or have members who engage in it.[100] These activities are broadly described under heads like 'disclaiming the sovereignty of India' or 'causing disaffection against India'.[101]

The UAPA empowers the Union government to notify any association as an unlawful association, subsequent to a confirmation by a tribunal within 6 months.[102] This notification is valid for a period of two years. The UAPA also includes prohibitory and confiscatory provisions in relation to using finances or places for the purposes of an unlawful association. Membership of an unlawful association is also penalised, as are acts such as 'taking part in meetings' of the association or assisting the operations of the association 'in any way'. The penalty for such acts is imprisonment for up to two years as well as a possible fine.[103]

In 2004, the UAPA was amended to include 'terrorist activities' and 'terrorist organisations' within its ambit. It defines a 'terrorist act' as any act which threatens the unity, integrity, security or sovereignty of India or is intended to strike terror in the people or any section of the people by doing any act causing or likely to cause the death of any person or the destruction of property.[104] Membership of 'terrorist organisations is a punishable offence. There is no requirement for the government to prove that an organisation is a terrorist organisation before a tribunal as is the case with unlawful associations.[105]

Criminal Law Amendment Act, 1908 (CL Act)

The CL Act follows a similar approach as the UAPA towards what it deems to be unlawful organisations. It empowers State Governments to notify associations as unlawful in the State Gazette, when the government is of the opinion that that association's object is interference with 'public administration' or the maintenance of law and order.[106]

The CL Act punishes membership of organisations deemed to be unlawful with imprisonment for up to six months, or a fine, and punishes 'management' of such an organisation with imprisonment up to three years, or a fine. The provisions of the CL Act are frequently utilised by State Governments to declare organisations as unlawful. The most recent instance was when the Jharkhand State Government deemed the Popular Front of India to be an unlawful association; a decision that was subsequently overturned by the Jharkhand High Court.[107]

Karnataka Control of Organised Crime Act, 2000 (KCOCA)

The KCOCA, modelled on the Maharashtra Control of Organised Crime Act, was intended to ease the prosecution of organised crimes primarily undertaken for economic benefit. It punishes the membership of certain organisations, known as 'organised crime syndicates', which 'indulge in activities of organised crime.' The definition of 'activities of organised crime' includes, among other things, the use of unlawful means for gaining financial benefit, or the promotion of insurgency.[108] An organisation can be deemed to be an 'organised crime syndicate' when its members have collectively been charged for committing an offence either in their capacity as a member or on behalf of that organisation.

The KCOCA makes membership of organisations that have been deemed 'organised crime syndicates' punishable with imprisonment up to a life term. It also punishes the act of concealing or holding property on behalf of an organised crime syndicate. Additionally, Section 14 of the KCOCA allows the police to intercept communications which may provide evidence of any 'organised crime'.

Madhya Pradesh Rajya Suraksha Adhiniyam, 1990 (MPRSA)

The MPRSA was enacted in order to maintain the security and public order in the State of Madhya Pradesh. Several provisions are dedicated to the regulation of mobilised groups. For instance, Section 4 empowers District Magistrates to disperse or issue directions to any gang or body if the Magistrate is satisfied that their "*movement or encampment is causing or is calculated to cause danger or alarm or reasonable suspicion that unlawful designs are entertained by such gang or body.*"

Under the MPRSA the State Government may also, if it feels it is necessary to maintain public order, issue an order to prohibit or restrict certain activities in any area. These include the holding of camps or any exercise movements, or drills of a military nature. Contravention of these orders could result in imprisonment for up to three years.[109] Similarly, the government may also declare certain places or areas as 'protected' and prohibit the entry of any persons into such areas.[110]

Karnataka Police Act, 1963 (KP Act)

State police acts are statues that primarily regulate the police force of any state. However, many of the state police acts also cover the powers and functions of the police relating to the maintenance of public order, including procedural provisions as well as substantive offences. The KP Act is illustrative of the kind of provisions that can be found in several state police acts.

The KP Act contains prohibitory provisions, similar to Section 144 of the CrPC, which state that the Commissioner and the District Magistrate may, for the preservation of public order, prohibit a number of activities, including the carrying of arms or the carrying out of processions or assemblies.[111] Similarly, Section 38 gives broad powers to make orders for the control of riots or 'grave disturbances of peace'.

Section 50 of the KP Act provides for the recovery of compensation for injury caused by an unlawful assembly by imposing a collective tax on the inhabitants of an area, as per the discretion of the district magistrate.

Further, Section 64 of the KP Act grants the State Government to prohibit, by order, any meetings or assemblies where arms training or military drilling are taking place.

Laws on liability for violence committed by groups

General Laws

The Indian Penal Code, 1860 and the Code of Criminal Procedure, 1973 are the primary laws responsible for the governance of the criminal justice system in India. There are specific provisions in both of these laws which are relevant for the governance of mobilised violence.

Indian Penal Code (IPC)

Chapter V of the IPC covers the abetment of offences. The IPC envisages three forms of abetment - firstly, by instigation - whether by words of suggestion; secondly, by conspiring with another to commit any illegal act; and thirdly, by providing aid for the commission of any offence.[112]

Section 109 provides that any person who abets an offence for which the penalty is not otherwise provided, shall be punished with the punishment provided for that offence. However, Section 117 specifically targets abetment of more than 10 persons, and provides for a separate offence for the same.[113] As Section 117 provides for a specific offence, it would be applicable in all cases of unlawful assemblies or riots which are committed by more than 10 persons.

Chapter VA of the IPC is also important for prosecuting people for conspiring to commit offences, and, as such, is often used to target the planning and organisation of riots. Section 120A of the IPC targets 'agreements', by two or more persons, to do an illegal act, or to do a legal act by illegal means. Section 120B punishes criminal conspiracy as if it was abetment of the offence so conspired in cases where the offence is punishable by death, life imprisonment or rigorous imprisonment, and in other cases by a term of up to six months and a fine.

Chapter VIII of the IPC addresses 'offences against the public tranquillity'. The offences under this chapter are specifically related to unlawful assemblies and the commission of violence by such assemblies, classified as rioting.

Section 141 of the IPC defines unlawful assemblies, which includes any assembly of five or more persons, having a 'common object'.[114] Membership *per se* of an unlawful assembly is punishable by imprisonment up to 6 months under Section 143.

Section 146 defines the offence of rioting.[115] The punishment for rioting is imprisonment up to 2 years, or a fine, or both. There are separate offences for assaulting or obstructing a public servant who is suppressing a riot.

Section 149 introduces vicarious common liability for the offences of an unlawful assembly, by making each member of an unlawful assembly liable for offences committed in the course of the commission of the common object of the assembly, or which the members of the unlawful assembly knew was likely to be committed.[116]

The Supreme Court in Nanak Chand v State of Punjab stated that Section 149 is applicable when *"...a person, who is a member of an unlawful assembly is made guilty of the offence committed by another member of the same assembly, in the circumstances mentioned in the section, although he had no intention to commit that offence and had done no overt act except his presence in the assembly and sharing the common object of that assembly."*[117]

In Subran and ors. vs State of Kerala, the Supreme Court also held that the offence of unlawful assembly and related offences can be sustained only where there are five or more persons. It held that "*A combined reading of Section 141 and Section 149 IPC show that an assembly of less than five members is not an unlawful assembly within the meaning of Section 141 and cannot, therefore, form the basis for conviction for an offence with the aid of Section 149 IPC."*[118]

Section 149 of the IPC bears a close relationship with Section 34, which posits individual liability for participating in an act of a group. Section 34 states that "*When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone."* The intention behind both provisions is to assist the prosecution in cases where individual liability may be difficult

to construe due to the nature of the offence and evidence.[119] However, there is little clarity on the distinction between Section 34 and Section 149 in their application to the prosecution of group crimes, with even the Supreme Court's jurisprudence on the issue being unclear as to the difference between the two sections. This leads to ambiguity in the prosecution of such group crimes.[120]

Section 150 provides for the liability of persons 'hiring or conniving to hire' persons to join an unlawful assembly.[121]

Section 153 punishes provocation for rioting.[122] The offence requires that a person, either with *malignant intention* or *wantonly*, commits an illegal action with the intention or knowledge that the offence of riot is likely to be an outcome of such provocation. It is important to note that this is one of the few provisions which incorporates a standard of negligence to counter the lack of necessary evidence to prove all the components of the offence, at least partially.

Offences in the nature of hate speech against communities under Section 153A(1) have been described elsewhere in this report. Additionally, Section 153A(c) is also an important measure against group violence, by allowing the prosecution of organisation of specific activities where the participants in such activity will be trained to use criminal force, and such activity causes fear among a community.[123]

Section 155 provides for the liability of persons who have derived benefit from riots or on whose behalf riots have been committed. It makes such person as described liable for a fine, in case the person does not "*use all lawful means in his or their power to prevent such assembly or riot from taking place, and for suppressing and dispersing the same.*"[124] However, the quantum of this fine is undefined.

Section 157 punishes the harbouring of persons with the knowledge that such persons have been hired to participate in an unlawful assembly. Section 158 provides for the liability of persons who are 'engaged, or offers or attempts to be hired or engaged' to do or assist in any of the common objects of an unlawful assembly mentioned in Section 141.

The Code of Criminal Procedure, 1973 (CrPC)

Chapter X of the CrPC deals with the maintenance of public order and tranquillity, and Chapter X-A deals with Unlawful Assemblies. The contents of the chapter mostly relate to the procedures to be followed for the dispersal or control of an unlawful assembly once it is formed, rather than the prevention of the same.

Section 144 of the CrPC grants wide, discretionary powers to the executive magistrate to do or refrain from doing any act to prevent, *inter alia,* injury, affray or riot or disturbance of

public tranquillity. These orders may be promulgated for two months at a time, which may be extended to 6 months by the State Government. The Magistrate or the State Government also have the discretion to maintain an application by an aggrieved person against such a prohibitory order and vacate or alter such an order.

The law deliberately provides broad powers to the executive in times of emergent situations stipulated under Section 144, namely, obstruction, annoyance or injury to any person lawfully employed, or danger to human life, health or safety or a disturbance of the public tranquillity, or a riot, or an affray. However, there are few guidelines on how such power should be exercised. Even though these orders are often utilised for the prevention of a riot or the maintenance of public order, no guidelines exist on the manner in which such power should be exercised.

The CrPC was amended in 2005, to include Section 144A, which, *inter alia,* provides that the *"District Magistrate may, whenever he considers it necessary so to do for the preservation of public peace or public safety or for the maintenance of public order, by public notice or by order, prohibit in any area within the local limits of his jurisdiction, the carrying of arms in any procession or the organising or holding of, or taking part in, any mass drill or mass training with arms in any public place."*

This provision bears a close relationship to Section 153AA of the IPC, which prosecutes the participation or organisation of military drills or arms training with the intention of committing violence. Similar powers to control military drills or arms training also exist in a number of state laws, including the Punjab State Security Act, 1953 and the Madhya Pradesh State Security Act, 1990, as well as in various state police acts.

Special Laws

Prevention of Damage to Public Property Act, 1984 (PDPP Act)

The PDPP Act is a central law providing for criminal liability for damage caused to public property. The law *imports* the offence of mischief from the IPC and penalises the acts of causing damage to public property by committing mischief (which is defined under the IPC as causing destruction to property). The law only provides for individual liability for causing damage and does not impose any form of collective liability on groups which may engage in such actions.

In Re: Destruction of Public Property vs State of Andhra Pradesh

In this 2009 case, the Supreme Court of India issued guidelines in the light of the legislative vacuum when it came to dealing with destruction of public property during political mobilisations. During the course of the hearings, the Supreme Court appointed the Justice KT

Thomas Committee to look into the law on liability for destruction of public property and suggest reforms. Accepting the recommendations of the Thomas Committee, the Court suggested several amendments to the PDPP Act:

"(i) The PDPP Act must be so amended as to incorporate a rebuttable presumption (after the prosecution established the two facets) that the accused is guilty of the offence.

(ii) The PDPP Act to contain provision to make the leaders of the organization, which calls the direct action, guilty of abetment of the offence.

(iii) The PDPP Act to contain a provision for rebuttable presumption.

(iv) Enable the police officers to arrange videography of the activities damaging public property."

The Supreme Court also laid down recommendations for the conduct of mobilisations undertaken by various organisations, including that "*the organizer shall meet the police to review and revise the route to be taken and to lay down conditions for a peaceful march or protest.*"[125]

Further, the Supreme Court suggested that organisers as well as participants in acts which lead to the destruction of property be made liable for civil and punitive damages. In the interim, until the proposed changes were enacted, the Supreme Court laid down some guidelines on how the High Courts or Supreme Court may take action against perpetrators and organisers of such demonstrations.

Finally, the Court framed new jurisprudence on the issue of constitutional torts - the liability for civil remedies in cases of constitutional infraction. While the Court has sustained cases of tort liability against the State for unlawful acts (like custodial violence), this was the first case in which such liability was sought to be expanded on a horizontal basis by extending the liability on to the perpetrators of the violence instead of the State. However, the court did not frame clear jurisprudence on this issue.

The recommendations of the Supreme Court were sought to be incorporated into the PDPP Act through amendments drafted in 2015, however, these amendments have not yet been made into law.[126] This was noted by the Court in Koshy Jacob v Union of India, in which the Court reiterated the need to relook the law on damage to public and private property.[127]

Karnataka Prevention of Destruction and Loss of Property Act, 1981 (PDLP Act)

The PDLP Act in Karnataka also punishes the destruction of public property in a manner similar to the central PDPP Act. However, in addition, the State Government is empowered to impose

a collective fine on the inhabitants of any area provided that they are 'concerned in' or aiding or abetting the offences under the Act.[128]

The Punjab Prevention of Damage to Public and Private Property Act, 2014

The Punjab PDPP Act provides for civil liability of persons involved in 'damaging acts', as defined under that Act. Under Section 6(2), where a 'damaging act' has taken place in the course of an organised demonstration, the government may recover the same from the organisers as well as the participants of such a demonstration.

Section 10 of the Punjab PDPP Act creates a presumption as to the sufficiency of evidence in prosecuting the offences under the statute. It states that "*notwithstanding anything contained in any other law for the time being in force, the videographic version of the damaging act recorded on the spot, shall be considered as sufficient evidence of the offence committed and the damage caused to the public or private property.*"

Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992 (TNPPDL Act)

The TNPPDL Act provides for civil and criminal liability for the defacement or destruction of property, including motor vehicles. The scheme of the Act is largely similar to other laws dealing with destruction of public properties.

Importantly, the Act includes a provision making organisations liable in cases where the offensive demonstration was organised by them. Section 9 of the TNPPDL Act states -

"Notwithstanding anything contained in this Act, where an offence punishable under this Act has been committed during any procession, assembly, meeting, agitation, demonstration or any other activity organised by a political party or communal, language or ethnic group, it shall be presumed that the offence has also been committed by such political party or communal, language or ethnic group and such political party or communal, language or ethnic group shall be liable to pay compensation for damage or loss caused to any property, in accordance with the provisions of this Act and the rules made thereunder."

While the Act establishes a specific authority for the fixing of compensation, the mechanism by which liability can be imposed on 'political parties, or communal, language or ethnic groups' is unclear.

Representation of the People Act, 1951 (RP Act)

The RP Act is a law regulating elections and the conduct of elected representatives. Section 8 of the Act contains certain disqualifications from holding office as a member of Parliament or any state legislature. It provides that when any person is convicted of any offence listed under the section, they are liable to be disqualified for a specified time period. As per the Supreme

Court decision in Lily Thomas v Union of India,[129] the disqualification takes effect from the date of the conviction of the accused.

Section 125 of the RP Act also provides for the offence of promoting enmity between classes in connection with elections. It states that "*Any person who in connection with an election under this Act promotes or attempts to promote on grounds of religion, race, caste, community or language, feelings of enmity or hatred, between different classes of the citizens of India shall he punishable with imprisonment for a term which may extend to three years, or with fine, or with both.*"

Appendix III - Hate Speech and the Criminal Justice System

The effectiveness of the criminal justice system in tackling hate speech must be examined in the light of the following factors:

1. Pendency at the investigation stage.

2. Pendency at the judicial disposal stage.

3. Lack of political censure against acts amounting to hate speech.

A note on the statistics

The numbers discussed below for pendency at the investigation and judicial disposal stages correspond to offences under Section 153-A and Section 153-B of the IPC. They are collated from the official statistics published by the National Crime Records Bureau (the NCRB).

Pendency at the Investigation Stage

The numbers outlined in Table III (1) reflect the slow progress witnessed in investigations by the authorities into cases of hate speech. At the same time, the addition of an almost equal number of new cases every year is bound to stretch the capacity of investigation authorities even more.

Year	Total Number of Cases
2015[130]	861 (424 new + 439 pending)
2016[131]	973 (478 new + 495 pending)

Table III (1)

Pendency at the Judicial Disposal Stage

In addition to taking a long time for the investigations to complete, a delay also occurs once the cases go to trial. The numbers in Table III (2) exhibit the following: one, courts have a high

pendency rate for cases dealing with such offences; and two, the conviction rates at the end of the judicial process is very low.[132]

Year	Number of Pending Cases	Pendency Rate	Conviction Rate
2015[133]	718	91.6%	13.6%
2016[134]	903	91.0%	15.3%

Table III (2)

Lack of Political Censure

For the provisions to be effective, they should have a significant buy-in from the political class. If, on the other hand, several politicians are implicated in cases involving hate speech, it dilutes the significance of the law. Table III (3) shows that several politicians have in fact cases lodged against them under provisions related to hate speech.

Type of Politician	Number of Politicians
Member of Parliament (MP) - Lok Sabha	15
Member of Legislative Assembly (MLA)	43

Table III (3)[135]

References

[1] Jat leaders threaten to resume agitation, The Hindu, 16 March 2016, available at https://www.thehindu.com/news/national/other-states/jat-leaders-threaten-to-resume-agitation/article8358338.ece (Last accessed 28 June 2018). Also see Haryana Jat Agitation Death Toll Rises To 30, NDTV, 26 February 2016, available at https://www.ndtv.com/india-news/haryana-jat-agitation-death-toll-rises-to-30-1281690 (Last accessed 12 November 2018).

[2] Cauvery Water Dispute: Two Dead As Violence Continues in Bengaluru, The Wire, 13 September 2016, available at https://thewire.in/politics/violence-continues-in-bengaluru-over-cauvery-water (Last accessed 28 June 2018). Also see Cauvery unrest: Death toll rises to 2, police cautions against spreading 'false information', DNA, 13 September 2018, available at https://www.dnaindia.com/india/live-cauvery-water-row-bengaluru-tamil-nadu-karnataka-curfew-violence-protest-prohibitory-orders-2254616 (Last accessed 12 November 2018).

[3] 36 dead in violence after conviction of Gurmeet Ram Rahim Singh, Livemint, 26 August 2017, available at https://www.livemint.com/Politics/TQt830eKFd6juqtqHhvVTL/32-died-in-violence-after-conviction-of-Gurmeet-Ram-Rahim-Si.html (Last accessed 28 June 2018). Also see Gurmeet Ram Rahim rape conviction: 36 killed, 250 injured in Dera violence, Business Standard, 27 August 2017, available at https://www.business-standard.com/article/current-affairs/gurmeet-ram-rahim-convicted-of-rape-30-dead-250-injured-in-dera-violence-117082501132_1.html (Last accessed 12 November 2018).

[4] A People's Account of the Ongoing Struggle for Gorkhaland, The Wire, 31 July 2017, available at https://thewire.in/government/gorkhaland-darjeeling-strike-mamata-banerjee (Last accessed 12 November 2018). Also see GJM man killed in clash; ninth Darjeeling death since June, The Times of India, 19 July 2017, available at https://timesofindia.indiatimes.com/india/gjm-man-killed-in-clash-ninth-darjeeling-death-since-june/articleshow/59657933.cms (Last accessed 12 November 2018).

[5] Bharat Bandh: 9 dead, thousands arrested, 1,700 anti-riot personnel at work, Business Standard, 2 April 2018, available at https://www.business-standard.com/article/current-affairs/sc-sc-ruling-bharat-bandh-hits-life-in-punjab-odisha-top-10-developments-118040200066_1.html (Last accessed 12 November 2018). Also see Bharat Bandh: 9 killed in Dalit protests, govt moves SC to protect SC/ST Act, Hindustan Times, 2 April 2018, available at https://www.hindustantimes.com/india-news/8-killed-in-dalit-protests-govt-moves-sc-to-protect-sc-st-act-as-opposition-steps-up-attack/story-YfUBvKL0tCZ0AAMgsnwevK.html (Last accessed 12 November 2018).

[6] Crime in India 2016, p. 538, National Crime Records Bureau, available here http://ncrb.gov.in/StatPublications/CII/CII2016/pdfs/NEWPDFs/Crime%20in%20India%20-%202016%20Complete%20PDF%20291117.pdf (Last accessed 29 June 2018). These figures correspond to incidents amounting to riots. The figures are higher when they account for scenarios where police use firing or lathi-charge in self-defence and while effecting an arrest.

[7] Annexure I, p. 37, Budget 2018-19, Ministry of Finance, available at https://www.indiabudget.gov.in/ub2018-19/bs/bs.pdf (Last accessed 21 July 2018). The gross budgetary support for MGNREGA for 2018-19 is set at ₹55,000 crore.

[8] AON 2017 Risk Maps, p. 66, available at http://www.aon.com/germany/publikationen/risk-solutions/2017-risk-maps/risk-map-brochure-2017.pdf (Last accessed 10 October 2018).

[9] Pinkerton-FICCI India Risk Survey 2017, p. 40, available at http://www.ficci.in/pressrelease/2806/india-risk-survey-ficci-press-release.pdf (Last accessed 29 June 2018). Pinkerton is a company that provides risk management services and FICCI (Federation of Indian Chambers of Commerce and Industry) is a business association. An interesting point made in the survey is that the risk of strikes, closures, and unrests has been identified as the seventh biggest risk, downgraded from the previous survey where it was ranked first.

[10] Items 1, 2, and 64 of List II (the State List), VIIth Schedule, The Constitution of India.

[11] Chinmayi Arun et. al., Hate Speech Laws in India, p. 25, Centre for Communication Governance (April 2018), available at https://www.latestlaws.com/wp-content/uploads/2018/05/NLUD-Report-on-Hate-Speech-Laws-in-India.pdf (Last accessed 8 July 2018).

[12] Report No. 267 on Hate Speech, p. 5-8, The Law Commission of India (March 2017), available at http://lawcommissionofindia.nic.in/reports/Report267.pdf (Last accessed 8 July 2018).

[13] Stifling Dissent: The Criminalisation of Peaceful Expression in India, p. 3-6, Human Rights Watch (May 2016), available at https://www.hrw.org/sites/default/files/report_pdf/india0516.pdf (Last accessed 9 July 2018). Despite the efforts of the judiciary to read down the scope of some of these legal restrictions, they are frequently used by the State apparatus to target critics and dissenters.

[14] Section 153-A, Indian Penal Code, 1860.

[15] Section 295-A, Indian Penal Code, 1860.

[16] Section 298, Indian Penal Code, 1860.

[17] Section 505, Indian Penal Code, 1860.

[18] Chinmayi Arun et. al., Hate Speech Laws in India, p. 50, Centre for Communication Governance (April 2018), available at https://www.latestlaws.com/wp-content/uploads/2018/05/NLUD-Report-on-Hate-Speech-Laws-in-India.pdf (Last accessed 8 July 2018).

[19] Shreya Singhal v Union of India, AIR 2015 SC 1523, Supreme Court of India. The judgement in this case struck down Section 66-A of the IT Act for being vague and for punishing acts other than those that amounted to an incitement.

[20] C. N. Ramachandran, Little reason to restrict the freedom of speech, The Hindu (26 September 2013), available at https://www.thehindu.com/opinion/op-ed/Little-reason-to-restrict-the-freedom-of-speech/article11884135.ece (Last accessed 8 July 2018).

[21] Stifling Dissent: The Criminalisation of Peaceful Expression in India, p. 8, Human Rights Watch (May 2016), available at https://www.hrw.org/sites/default/files/report_pdf/india0516.pdf (Last accessed 8 July 2018).

[22] Himat Lal K Shah v Commissioner of Police, Ahmedabad, 1973 SCR (2) 266, Supreme Court of India.

[23] Babulal Parate v State of Maharashtra, AIR 1961 SC 884, Supreme Court of India.

[24] Madhu Limaye v Sub-Divisional Magistrate, Monghyr, (1969) 1 SCC 292, Supreme Court of India.

[25] Mazdoor Kisan Shakti Sangathan v Union of India and Anr., W.P.(Civil) 1153 of 2017, Supreme Court of India (July 23, 2018).

[26] *Id.*

[27] Bharat Kumar K. Palicha v State of Kerala, AIR 1997 Ker 291, High Court of Kerala.

[28] The Communist Party of India (M) vs. Bharat Kumar & Ors., (1998) 1 SCC 201, Supreme Court of India.

[29] An illustrative, but not exhaustive, list of these laws is provided in Appendix II.

[30] PUCL and Anr. v Union of India (UOI), AIR 2004 SC 456, Supreme Court of India.

[31] VG Row v Union of India, 1952 SCR 597, Supreme Court of India.

[32] Jamaat-E-Islami Hind v. Union of India, 1995 SCC (1) 428, Supreme Court of India.

[33] Section 2(f), The Unlawful Activities (Prevention) Act, 1967. The definition of an unlawful activity under this provision also includes the activities that relate to cession or secession of a part of the territory of India.

[34] Indra Das v State of Assam, (2011) 3 SCC 380, Supreme Court of India; Arup Bhuyan v State of Assam, 2011 3 SCC 377, Supreme Court of India.

[35] http://www.lawyerservices.in/Arup-Bhuyan-Versus-State-of-Assam-2014-08-26

[36] Gautam Bhatia, Speech, Association, Personal Liberty, and the State of Exception: Jyoti Chorge v. State of Maharashtra, 4 April 2018, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3156473 (Last accessed 30 July 2018).

[37] *Ibid.*

[38] Banned and Damned: SIMI's Saga with UAPA Tribunals, People's Union for Democratic Rights, June 2015, available at http://pudr.org/sites/default/files/pdfs/Banned%20and%20damned_for%20upload_11%20july.pdf (Last accessed 30 July 2018).

[39] Guidelines on Communal Harmony, Ministry of Home Affairs, Government of India, available at https://mha.gov.in/sites/default/files/ComHor141008.pdf, (Last accessed 30 July 2018). "*Activities of organizations with avowed goals that could undermine communal harmony should be continuously kept under careful watch and scrutiny, and a record of the activities maintained. If any such organizations are found to be indulging in any unlawful activity as defined in the Unlawful Activities (Prevention) Act, 1967, action to declare them as Unlawful Associations under the Act and other consequential action should be taken. District/Police Station level monitoring of these organizations should be carried out at periodic intervals.*"

[40] Lee Jarvis and Tim Legrand, The Proscription or Listing of Terrorist Organisations: Understanding, Assessment, and International Comparisons (2018) 30:2, Terrorism and Political Violence, available at https://www.tandfonline.com/doi/full/10.1080/09546553.2018.1432199 (Last accessed 30 July 2018).

[41] Paul Brass, *Forms of Collective Violence: Riots, Pogroms, and Genocide in Modern India* (Three Essays Collective 2006); Paul Brass, Development of an Institutionalised Riot System in Meerut City, 1961 to 1982 (2004) 39:44 Economic and Political Weekly 4839; Steven I. Wilkinson, *Votes and Violence: Electoral Competition and Ethnic Riots in India* (Cambridge University Press 2004).

[42] In re Destruction of Public and Private Property v State of Andhra Pradesh and Ors., (2009) 5 SCC 212, Supreme Court of India; Tehseen S. Poonawalla Vs. Union of India and Ors., AIR 2018 SC 3354, Supreme Court of India; Kodungallur Film Society and Anr. v Union of India and Anr., W.P. (Civil) 330 of 2018, Supreme Court of India;

[43] This corresponds to the offences under Sections 153A, 153B, and 505 of the Indian Penal Code, 1860.

[44] State of Himachal Pradesh v Nishant Sareen, (2010) 14 SCC 527, Supreme Court of India.

[45] Public Order, Fifth Report of the Second Administrative Reforms Commission, June 2007, available at https://darpg.gov.in/sites/default/files/public_order5.pdf (Last accessed 30 July 2018).

[46] Capacity Building for Conflict Resolution, Seventh Report of Second Administrative Reforms Commission, February 2008, available at https://darpg.gov.in/sites/default/files/capacity_building7.pdf (Last accessed 30 July 2018).

[47] An advantage of introducing civil liability is that it requires reduced evidentiary burdens to establish culpability when compared to a criminal prosecution, where the burden of proof is significantly higher.

[48] Tarunabh Khaitan, Make them pay for it, The Telegraph, 21 June 2005, available at https://www.telegraphindia.com/1050621/asp/opinion/story_4871199.asp (Last accessed 30 July 2018).

[49] In re Destruction of Public and Private Property v State of Andhra Pradesh and Ors., (2009) 5 SCC 212, Supreme Court of India.

[50] Section 357A, Code of Criminal Procedure, 1973.

[51] Section 357, Code of Criminal Procedure, 1973.

[52] Shruti Tomar, Bajrang Dal arms training to cadres to take on "love jehadists", Hindustan Times, 29 May 2018, available at https://www.hindustantimes.com/bhopal/bajrang-dal-arms-training-to-cadres-to-take-on-love-jehadists/story-i16GhTufFUUKQ3G6KWWc0M.html (Last accessed 30 July 2018); "Bajrang Dal, Durga Vahini training camps completely legal, development-oriented": VHP rubbishes "propaganda" driven media reports, Firstpost, 31 May 2018, available at https://www.firstpost.com/india/bajrang-dal-durga-vahini-training-camps-completely-legal-development-oriented-vhp-rubbishes-propaganda-driven-media-reports-4489161.html (Last accessed 30 July 2018).

[53] Report No. 154 on the Code of Criminal Procedure, 1973, Vol. I, The Law Commission of India (1956), available at http://lawcommissionofindia.nic.in/101-169/Report154Vol1.pdf (Last accessed 12 October 2018).

[54] For example, Article 86(2) of the 1977 Additional Protocol I to the Geneva Convention provides - "*The fact that a breach of the Conventions or this Protocol was committed by a subordinate does not absolve his superiors from penal or disciplinary responsibility, as the case may be, if they knew, or had information which should have enabled them to conclude in the circumstances at the time, that he was committing or was going to commit such a breach and if they did not take all feasible measures within their power to prevent or repress the breach.*"

[55] J.A. Williamson, *Some considerations on command responsibility and criminal liability*, International Review of the Red Cross, 90:870, available at https://www.icrc.org/eng/assets/files/other/irrc-870_williamson.pdf (Last accessed 26 November 2018).

[56] In re Destruction of Public and Private Property v State of Andhra Pradesh and Ors., (2009) 5 SCC 212, Supreme Court of India.

[57] Sachin Jana & Another vs State of West Bengal, 2008 (2) SCALE 2 SC, Supreme Court of India.

[58] Section 278B, the Income Tax Act, 1961.

[59] Report No. 242 on Prevention of Interference with the Freedom of Matrimonial Alliances (in the name of Honour and Tradition): A Suggested Legal Framework, The Law Commission of India (August 2012), available at http://lawcommissionofindia.nic.in/reports/report242.pdf (Last accessed 12 October 2018).

[60] For example, Section 113A of the Indian Evidence Act incorporates a presumption as to abetment of suicide by the husband or relatives of a married woman involved in marital cruelty. However, this is presumed on the lack of direct evidence which can be gathered from private premises of a house.

[61] Mohd. Khalid v State of West Bengal, (2002) 7 SCC 334, Supreme Court of India.

[62] Sections 284-289 of the IPC.

[63] Section 155 of the IPC.

[64] Section 153 of the IPC.

[65] Stanley Meng Heong Yeo, *Recklessness Under The Indian Penal Code*, Journal of the Indian Law Institute, 30(3), 293.

[66] Paul Brass, *Forms of Collective Violence: Riots, Pogroms, and Genocide in Modern India* (Three Essays Collective 2006); Paul Brass, Development of an Institutionalised Riot System in Meerut City, 1961 to 1982 (2004) 39:44 Economic and Political Weekly 4839; Steven I. Wilkinson, *Votes and Violence: Electoral Competition and Ethnic Riots in India* (Cambridge University Press 2004).

[67] Section 8, The Representation of the People Act, 1951.

[68] Please see Appendix-III for a brief examination of some of the failings of the criminal justice system with regard to clamping down on hate speech.

[69] Art. 19(1)(a), The Constitution of India.

[70] Art. 19(2), The Constitution of India. The other grounds are sovereignty and integrity of India, security of the State, friendly relations with foreign States, decency or morality, contempt of court, and defamation.

[71] Report No. 267 on Hate Speech, p. 51-52, The Law Commission of India (March 2017), available at http://lawcommissionofindia.nic.in/reports/Report267.pdf (Last accessed 9 July 2018).

[72] The existing provisions mention the following group identities: religion, race, place of birth, residence, language, caste, and community.

[73] Report No. 267 on Hate Speech, p. 37, The Law Commission of India (March 2017), available at http://lawcommissionofindia.nic.in/reports/Report267.pdf (Last accessed 9 July 2018).

[74] Report No. 267 on Hate Speech, p. 32-35, The Law Commission of India (March 2017), available at http://lawcommissionofindia.nic.in/reports/Report267.pdf (Last accessed 9 July 2018). The parameters outlined include extremity of the speech, the element of incitement, status of the author of the speech and the victim/s, the potentiality of the speech, and the context in which the speech was made.

[75] This is in fact already the case with Section 153-A of the IPC, where the list of different grounds is supplemented by the phrase “or any other ground whatsoever”, permitting the use of

the provision on grounds other than the ones expressly mentioned. The LCI report does not mention why such inclusive language was not adopted as part of its recommendations.

[76] This can be achieved by including the draft provisions under Section 8(1)(a) of the Representation of the People Act, 1951 (the RPA Act). This will lead to an automatic disqualification under the RPA Act. This will discourage individuals from seeking political capital by committing these offences.

[77] See Seven states, 35 cases: How the Karni Sena scaled up its violent agitation against 'Padmavaat', Scroll.in, 27 January 2018, available at https://scroll.in/article/866535/seven-states-35-cases-how-karni-sena-has-scaled-up-its-violent-agitation-against-padmaavat (Last accessed 22 October 2018). Also see Haven't watched it, but have a 'hunch': Karni Sena chief, The Times of India, 19 November 2017, available at https://timesofindia.indiatimes.com/city/gurgaon/havent-watched-it-but-have-a-hunch-karni-sena-chief/articleshow/61707923.cms (Last accessed 22 October 2018).

[78] Would have beheaded lakhs over Bharat Mata Ki Jai: Baba Ramdev, The Economic Times, 4 April 2016, available at https://economictimes.indiatimes.com/news/politics-and-nation/would-have-beheaded-lakhs-over-bharat-mata-ki-jai-baba-ramdev/articleshow/51679774.cms (Last accessed 22 October 2018). Also see Ramdev Baba: Would have beheaded lakhs over Bharat Mata Ki Jai, Financial Express, 4 April 2016, available at https://www.financialexpress.com/india-news/ramdev-baba-would-have-beheaded-lakhs-over-bharat-mata-ki-jai/232480/ (Last accessed 22 October 2018).

[79] Section 159, IPC. The offence of affray covers an incident where public peace is disturbed by the fighting of two or more persons.

[80] Rakesh Dubbudu, Is Government Crime Data Reliable? The case of "Communal Incidents Data", 1 December 2017, available at https://factly.in/governments-crime-data-reliable-case-communal-incidents-data/ (Last accessed 30 July 2018).

[81] Crime in India 2016, National Crime Records Bureau, available at http://ncrb.gov.in/StatPublications/CII/CII2016/pdfs/NEWPDFs/Crime%20in%20India%20-%202016%20Complete%20PDF%20291117.pdf (Last accessed 30 July 2018).

[82] Rakesh Dubbudu, In 2016, NCRB Recorded 869 Communal Riots; Home Ministry Says 703, IndiaSpend, 7 December 2017, available at http://www.indiaspend.com/cover-story/in-2016-ncrb-recorded-869-communal-riots-home-ministry-says-703-7 (Last accessed 30 July 2018).

[83] Ashutosh Varshney and Steven Wilkinson, *Varshney-Wilkinson Dataset on Hindu-Muslim Violence in India*, 1950-1995, Version 2, Inter-university Consortium for Political and Social Research (2006), available at https://www.icpsr.umich.edu/icpsrweb/ICPSR/studies/4342 (Last accessed 30 July 2018).

[84] Surabhi Chopra et. al., Accountability for Mass Violence: Examining the State's Record (May 2012), available at https://idl-bnc-idrc.dspacedirect.org/bitstream/handle/10625/49277/IDL-49277.pdf?sequence=1 (Last accessed 30 July 2018).

[85] Section 12, The Protection of Human Rights Act, 1993.

[86] Left Wing Extremism Division, Ministry of Home Affairs, available at https://mha.gov.in/division_of_mha/left-wing-extremism-division (Last accessed 30 July 2018); Counter Terrorism and Counter Radicalization Division, Ministry of Home Affairs, available at https://mha.gov.in/division_of_mha/counter-terrorism-and-counter-radicalization-division (Last accessed 30 July 2018).

[87] Elisabeth Gilgen and Lauren Tracey, Contributing Evidence to Programming: Armed Violence Monitoring Systems, Geneva Declaration Secretariat (2011), available at http://www.genevadeclaration.org/fileadmin/docs/general/GD-WP-2011-Contributing-Evidence-to-Programming.pdf (Last accessed 30 July 2018).

[88] Manual for the Creation of National Public Security Observatories on Crime and Violence, Department of Public Security, Organisation of American States, available at https://www.oas.org/dsp/alertamerica/documents/manualfornationalobservatories.pdf (Last accessed 30 July 2018).

[89] Report No. 197 on Public Prosecutor's Appointments, p. 16, The Law Commission of India (July 2006), available at http://lawcommissionofindia.nic.in/reports/rep197.pdf (Last accessed 21 July 2018). The report mentions some of the terms generally used to signify this status of the public prosecutor, including officer of the Court and minister of justice.

[90] Section 24, Code of Criminal Procedure, 1973.

[91] Section 25-A, Code of Criminal Procedure, 1973.

[92] Smriti Parsheera, Reforms of prosecution in the Indian criminal justice system, 7 May 2015, available at https://ajayshahblog.blogspot.com/2015/05/reforms-of-prosecution-in-indian.html (Last accessed 21 July 2018).

[93] Vineet Narain & Others vs. Union of India & Another, 1 SCC 226, Supreme Court of India.

[94] B.N. Srikrishna, The Commission Report into the Bombay riots of December 1992, January 1993 and the Serial Bomb Blasts in March 1993, Vol. II (1998), available at https://www.sabrang.com/srikrish/vol2.htm (Last accessed 26 November 2018).

[95] Sheonandan Paswan v State of Bihar, (1987) 1 SCC 288, Supreme Court of India.

[96] Budget at a Glance 2018-19, available at https://www.indiabudget.gov.in/ub2018-19/bag/bag1.pdf (Last accessed 29 June 2018). The GDP for the budgetary estimate for 2018-19 was projected at ₹ 1,87,22,302 crore.

[97] State Accounts can be accessed on the website of the CAG at https://www.cag.gov.in/state-accounts.

[98] Bibek Debroy, Price of a bandh, The Indian Express, 9 July 2010, available at http://archive.indianexpress.com/news/price-of-a-bandh/644243/0 (Last accessed 29 June 2018).

[99] Bharat bandh cost Rs 25,000 crore to economy: Chambers, The Indian Express, 2 September 2015, available at https://indianexpress.com/article/india/india-others/one-day-strike-cost-rs-25000-crore-to-economy-chambers/ (Last accessed 29 June 2018). The estimate of ₹ 25,000 crore was arrived at by the Associated Chambers of Commerce and Industry of India (ASSOCHAM).

[100] Section 2(p) of the Unlawful Activities (Prevention) Act, 1967 defines an unlawful association as -

> "*...any association,-*
>
> *(i) which has for its object any unlawful activity, or which encourages or aids persons to undertake any unlawful activity, or of which the members undertake such activity; or*

(ii) which has for its object any activity which is punishable under Section 153-A or Section 153-B of the Indian Penal Code (45 of 1860), or which encourages or aids persons to undertake any such activity, or of which the members undertake any such activity."

[101] Section 2(o) of the Unlawful Activities (Prevention) Act, 1967 defines unlawful activity as "*any action taken by such individual or association (whether by committing an act or by words, either spoken or written, or by signs or by visible representation or otherwise), —*

(i) which is intended, or supports any claim, to bring about, on any ground whatsoever, the cession of a part of the territory of India or the secession of a part of the territory of India from the Union, or which incites any individual or group of individuals to bring about such cession or secession; or

(ii) which disclaims, questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India; or

(iii) which causes or is intended to cause disaffection against India."

[102] See Section 3, the Unlawful Activities (Prevention) Act, 1967.

[103] Section 10 of the Unlawful Activities (Prevention) Act, 1967 states that "*Where an association is declared unlawful by a notification issued under Section 3 which has become effective under sub-section (3) of that section,-*

(a) a person, who-

(i) is and continues to be a member of such association; or

(ii) takes part in meetings of such association; or

(iii) contributes to, or receives or solicits any contribution for the purpose of, such association; or

iv) in any way assists the operations of such association, shall be punishable with imprisonment for a term which may extend to two years, and shall also be liable to fine; and

(b) a person, who is or continues to be a member of such association, or voluntarily does an act aiding or promoting in any manner the objects of such association and in either case is in possession of any unlicensed firearms, ammunition, explosive or other instrument or substance capable of causing mass destruction and commits any act resulting in loss of human life or grievous injury to any person or causes significant damage to any property,-

(i) and if such act has resulted in the death of any person, shall be punishable with death or imprisonment for life, and shall also be liable to fine;

(ii) in any other case, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine."

[104] Section 15 of the Unlawful Activities (Prevention) Act, 1967.

[105] Section 2(1)(l) of the Unlawful Activities (Prevention) Act, 1967 defines a terrorist gang as "*any association, other than terrorist organisation, whether systematic or otherwise, which is concerned with, or involved in, terrorist acts*." Section 2(1)(m) defines a terrorist organisation as "*an organisation listed in the Schedule or an organisation operating under the same name as an organisation so listed.*" Section 35 of the UAPA empowers the Union government to notify an organisation as a terrorist organisation by adding it to the First Schedule of the statute.

[106] Section 16 of the Criminal Law Amendment Act, 1908 states that "*If the State Government is of opinion that any association interferes or has for its object interference with the public administration or the maintenance of supplies and services essential to the life of the community or the administration of the law or the maintenance of law and order, or that it constitutes a danger to the public peace the State Government may, by notification in the Official Gazette, declare such association to be unlawful.*"

[107] 'Jharkhand bans Popular Front of India for spreading anarchy in state' (*The Times of India*, 22 February 2018) <https://timesofindia.indiatimes.com/india/jharkhand-bans-pfi-for-spreading-anarchy-in-state/articleshow/63025257.cms> accessed 6 June 2018; Abdul Wadud and Ors. v. State of Jharkhand, W.P.(Cr) No. 94 of 2018, High Court of Jharkhand.

[108] Section 2(e) of the Karnataka Control of Organised Crime Act, 2000 defines Organised Crime as "*any continuing unlawful activity by an individual, singly or jointly, either as a member of an organised crime syndicate or on behalf of such syndicate, by use of violence or threat of violence or intimidation or coercion, or other unlawful means, with the objective of gaining pecuniary benefits, or gaining undue economic or other advantage for himself or any person or promoting insurgency.*" A continuing unlawful activity is defined under Section 2(d) as "*an activity prohibited by law for the time being in force, which is a cognizable offence punishable with imprisonment of three years or more, undertaken either singly or jointly, as a member of an organised crime syndicate or on behalf of such syndicate in respect of which more than one charge-sheets have been field before a competent Court within the preceding period of ten years and that Court has taken cognizance of such offence.*"

[109] Section 22, the Madhya Pradesh Rajya Suraksha Adhiniyam, 1990.

[110] Section 25 and Section 26, the Madhya Pradesh Rajya Suraksha Adhiniyam, 1990.

[111] Section 35, the KPA.

[112] Section 107, the Indian Penal Code, 1860.

[113] It provides that "*Whoever abets the commission of an offence by the public generally or by any number or class of persons exceeding ten, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.*"

[114] Section 141 of the IPC lists out the following as part of the common object:

"*First. — To overawe by criminal force , or show of criminal force, the Central or any State Government or Parliament or the Legislature of any State, or any public servant in the exercise of the lawful power of such public servant; or*

Second. — To resist the execution of any law, or of any legal process; or

Third. — To commit any mischief or criminal trespass, or other offence; or

Fourth. — By means of criminal force, or show of criminal force, to any person , to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use

of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or

Fifth. — By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do."

[115] Rioting is defined as "*Whenever force or violence is used by an unlawful assembly, or by any member thereof, in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting.*"

[116] Section 149 states that "*Every member of unlawful assembly guilty of offence committed in prosecution of common object — If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.*"

[117] Nanak Chand v The State of Punjab, 1955 SCR (1) 1201, Supreme Court of India.

[118] Subran and Ors. v State of Kerala, 1993 SCC (3) 32, Supreme Court of India.

[119] Rajendra Shantaram Todankar v State of Maharashtra, (2003) 2 SCC 257, Supreme Court of India.

[120] K.N. Chandrashekharan Pillai, Group Liability' in 'Essays on the Indian Penal Code, available at http://14.139.60.114:8080/jspui/bitstream/123456789/742/16/Group%20Liability.pdf (Last accessed 6 June 2018).

[121] Section 150, the Indian Penal Code, 1860 states that "*Hiring, or conniving at hiring, of persons to join unlawful assembly . — Whoever hires or engages, or employs, or promotes, or connives at the hiring, engagement or employment of any person to join or become a member of any unlawful assembly, shall be punishable as a member of such unlawful assembly, and for any offence which may be committed by any such person as a member of such unlawful assembly in pursuance of such hiring, engagement or employment, in the same manner as if he had been a member of such unlawful assembly, or himself had committed such offence.*"

[122] Section 153, the Indian Penal Code, 1860 states that "*Whoever malignantly, or wantonly, by doing anything which is illegal, gives provocation to any person intending or knowing it to be likely that such provocation will cause the offence of rioting to be committed, shall, if the offence of rioting be committed in consequence of such provocation, be punished with imprisonment of either de-scription for a term which may extend to one year, or with fine, or with both; and if the offence of rioting be not committed, with imprisonment of either description for a term which may extend to six months, or with fine, or with both.*"

[123] Section 153A(c) of the Indian Penal Code, 1860 states that "*Whoever … organizes any exercise, movement, drill or other similar activity intending that the participants in such activity shall use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, or participates in such activity intending to use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, against any religious, racial, language or regional group or caste or community and such activity for any reason whatsoever causes or is likely to cause fear or alarm or a feeling of insecurity amongst members of such religious, racial, language or regional group or caste or community,*" shall be punishable by imprisonment of up to 3 years.

[124] Section 155, the Indian Penal Code, 1860 provides that "*Whenever a riot is committed for the benefit or on behalf of any person who is the owner or occupier of any land respecting which such riot takes place or who claims any interest in such land, or in the subject of any dispute which gave rise to the riot, or who has accepted or derived any benefit therefrom, such person shall be punishable with fine, if he or his agent or manager, having reason to believe that such riot was likely to be committed or that the unlawful assembly by which such riot was committed was likely to be held, shall not respectively use all lawful means in his or their power to prevent such assembly or riot from taking place, and for suppressing and dispersing the same.*"

[125] In Re: Destruction of Public and Private Properties vs. State of A.P. and Ors., AIR 2009 SC 2266, Supreme Court of India.

[126] Suggestions regarding Amendment to the Prevention of Damage to Public Property Act 1984 by the Prevention of Damage to Public Property (Amendment) Bill, [2015] F. No. 24013/12/C.C./2013-CSR.III, Ministry of Home Affairs, available at https://mha.gov.in/sites/default/files/PublicProDamgeAct_200515_0.pdf (Last accessed 6 June 2018).

[127] Koshy Jacob v Union of India, (2018) 11 SCC 756, Supreme Court of India.

[128] Section 4, Prevention of Destruction and Loss or Public Property Act, 1981. A similar provision exists under the Madhya Pradesh Rajya Suraksha Adhiniyam, 1990.

[129] Lily Thomas v Union of India, (2000) 6 SCC 224, Supreme Court of India.

[130] Crime in India: 2015 Statistics, p. 118, National Crime Records Bureau, Ministry of Home Affairs (2016), available at http://ncrb.gov.in/StatPublications/CII/CII2015/FILES/CrimeInIndia2015.pdf (Last accessed 9 July 2018).

[131] Crime in India: 2016 Statistics, p. 542, National Crime Records Bureau, Ministry of Home Affairs (2017), available at http://ncrb.gov.in/StatPublications/CII/CII2016/pdfs/NEWPDFs/Crime%20in%20India%20-%202016%20Complete%20PDF%20291117.pdf (Last accessed 9 July 2018).

[132] Note that the low conviction rate could also reflect a large number of cases that have been filed despite not having adequate grounds for the offence to be made out.

[133] Crime in India: 2015 Statistics, p. 131, National Crime Records Bureau, Ministry of Home Affairs (2016), available at http://ncrb.gov.in/StatPublications/CII/CII2015/FILES/CrimeInIndia2015.pdf (Last accessed 9 July 2018).

[134] Crime in India: 2016 Statistics, p. 567, National Crime Records Bureau, Ministry of Home Affairs (2017), available at http://ncrb.gov.in/StatPublications/CII/CII2016/pdfs/NEWPDFs/Crime%20in%20India%20-%202016%20Complete%20PDF%20291117.pdf (Last accessed 9 July 2018).

[135] Analysis of MPs/MLAs with Declared Cases Related to Hate Speech, p. 4, Association for Democratic Reforms (2018), available at https://adrindia.org/content/analysis-mpsmlas-declared-cases-related-hate-speech-0 (Last accessed 9 July 2018). The numbers in the report are based on self-sworn affidavits filed by the serving politicians before the previous election in which they contested and won.