

Bill No. XLIV of 2017

THE PROTECTION FROM LYNCHING BILL, 2017

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Bill No. XLIV of 2017

THE PROTECTION FROM LYNCHING BILL, 2017

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BILL

to provide for effective protection of the Constitutional rights of vulnerable persons, to punish acts of lynching, to provide for designated courts for the expeditious trial of such offences, for rehabilitation of victims of lynching and their families and for matters connected therewith or incidental thereto.

WHEREAS the Constitution of India guarantees to all persons the right to life and personal liberty and the Equal Protection of Laws;

AND WHEREAS in recent times, there have been a spate of incidents resulting in loss of livelihood, injuries and death of persons at the hands of lynch mods;

AND WHEREAS it is deemed necessary and expedient to enact legislation for the protection of these rights guaranteed by the Constitution;

BE it enacted by Parliament in the Sixty-eighth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

- 5 **1.** (1) This Act may be called the Protection from Lynching Act, 2017.
 (2) It extends to the whole of India except the State of Jammu and Kashmir.
 (3) The Act shall come into force within thirty days of its enactment.

Short Title,
extent and
commence-
ment.

Definitions.

2. In this Act, unless the context otherwise requires;

(a) “appropriate Government” means in the case of a State, the Government of that State and in all other cases, the Central Government;

(b) “hostile environment” means intimidating or coercive environment that is created against the victim or the family members of the victim or against any witnesses or any one providing assistance to the witness or victim, which includes being subjected to the following act—

(i) boycott of the trade or businesses of such person or making it otherwise difficult for him or her to earn a living; or

(ii) public humiliation through exclusion from public services, including education, health and transportation or any act of indignity; or

(iii) deprive or threaten to deprive such person of his or her fundamental rights; or

(iv) force such person to leave his or her home or place of ordinary residence or livelihood without his or her express consent; or

(v) any other act, whether or not it amounts to an offence under this Act, that has the purpose or effect of creating an intimidating, hostile or offensive environment.

(c) “lynching” means any act or series of acts of violence or aiding, abetting or attempting an act of violence, whether spontaneous or planned, by a mob on the grounds of religion, race, caste, sex, place of birth, language, dietary practices, sexual orientation, political affiliation, ethnicity or any other related grounds.

(d) “mob” means a group of two or more individuals, assembled with an intention of lynching.

(e) “offensive material” means any material that can be reasonably construed to have been made to incite a mob to lynch a person on the grounds of religion, race, caste, sex, place of birth, language, dietary practices, sexual orientation, political affiliation, ethnicity or any other related grounds.

(f) “victim” means any person, who has suffered physical, mental, psychological or monetary harm as a result of the commission of any offence under this Act, and includes his or her relatives, legal guardian and legal heirs of a deceased victim.

(g) “witness” means any person who is acquainted with the facts and circumstances, or is in possession of any information or has knowledge necessary for the purpose of investigation, inquiry or trial of any crime involving an offence under this Act, and who is or may be required to give information or make a statement or produce any document during investigation, inquiry or trial of such case and includes a victim of such offence.

(h) Words and expressions used but not defined in this Act and defined in the Code of Criminal Procedure, 1973 or the Indian Penal Code shall have the meanings assigned to them respectively in the Code of Criminal Procedure, 1973, or as the case may be, in the Indian Penal Code, 1860.

CHAPTER II

DUTIES OF POLICE OFFICER AND DISTRICT MAGISTRATE

Duties of
Police Officer.

3. (1) Every police officer, directly in charge of maintaining law and order in an area shall take all reasonable steps to prevent any act of lynching including its incitement and commission; and to that end—

(i) make all possible efforts to identify instances of dissemination of offensive material or any other means employed in order to incite or promote lynching of a particular person or group of persons;

(ii) act in furtherance of the duty to prevent lynching in accordance with the powers vested in them; and

(iii) make all possible efforts to prevent the creation of a hostile environment against a person or group of persons.

5 (2) Every police officer shall take every possible action to the best of their ability, to prevent the commission of all offences under this Act.

2 of 1974.

4. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 whenever the District Magistrate has reason to believe that in any area within his jurisdiction, a situation has arisen where there is an apprehension of lynching, he may, by order in writing, prohibit any act which in his opinion is likely to lead to the incitement and commission of an act of lynching.

Duties of District Magistrate.

(2) The District Masistrate shall take every possible action to the best of his or her ability to prevent the creation of a hostile environment against a person or group of persons.

CHAPTER III

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PREVENTION OF ACTS LEADING TO LYNCHING

5. (1) It shall be duty of every police officer, in-charge of a police station to take all reasonable steps to prevent any incident of lynching, including its incitement, commission and possible spread in the area under their jurisdiction and to that end—

Duty to prevent lynching.

(i) make all possible efforts to identify patterns of violence in the area under their jurisdiction, that indicate occurrence of targeted violence;

(ii) obtain information regarding the likelihood of an act of lynching; and

(iii) act in furtherance of the duty to prevent any act of lynching in accordance with the powers vested in them;

(2) Every police officer exercising powers under this Act in discharge of their duties shall act without any delay in a fair, impartial and non-discriminatory manner.

6. (1) It shall be the duty of every police officer in-charge of a police station to exercise his authority on a mob in order to cause it to disperse.

Power to exercise authority against mobs.

(2) In exercise of his authority, a police officer in-charge of a police station may use such powers as vested under Section 129 of the Code of Criminal Procedure, 1973.

2 of 1974

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CHAPTER IV

PUNISHMENT FOR LYNCHING

7. Whoever commits and act of lynching—

Punishment for offence of lynching.

(a) where the act leads to the victim suffering hurt, shall be punished with imprisonment of either description for a term which may extend to seven years and with fine which may extend to one lakh rupees.

(b) where the act leads to the victim suffering grievous hurt, shall be punished with imprisonment of either description for a term which may extend to ten years, and with fine which may extend to three lakh rupees.

(c) where the act leads to the death of the victim, shall be punished with rigorous imprisonment for life and with fine which may extend to five lakh rupees.

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8. Whoever takes part in a conspiracy or conspires to lynch another person, or abets or aides or attempts an act of lynching shall be punished in the same manner as if they had taken part in the actual incident of lynching.

Punishment for conspiracy or abetment or aides or attempt to lynch

Punishment for obstructing legal process.	9. Any person who— (a) knows or have reasonable cause to believe that any other person is guilty of an offence under this Act, gives that other person any assistance with intent thereby to prevent, hinder or otherwise interfere with his arrest, trial or punishment for the said offence, shall be punished with imprisonment for a term which may extend to five years and shall also be liable to fine. (b) threatens a witness with any injury to his person or property or to the person or property of any one in whom that person is interested, with intent to cause harm to that person, or to compel that person to refrain or withdraw from being a witness in any investigation or trial under this Act shall be punished with imprisonment for a term which may extend to five years and shall also be liable to fine.	5 10
CHAPTER V OTHER OFFENCES AND PUNISHMENT		
Punishment for dissemination of offensive material	10. Notwithstanding anything contained in any other law for the time being in force, whoever publishes, communicates or disseminates by any method, physical or electronic, any offensive material, shall be punished with imprisonment of either description for a term of not less than one year which may extend to three years, and with fine which may extend to fifty thousand rupees.	15
Dereliction of duty by Police Officer	11. (1) When any police officer, directly in charge of maintaining law and order in an area, omits to exercise lawful authority vested in them under law, without reasonable cause, and thereby fails to prevent lynching, shall be guilty of dereliction of duty. <i>Explanation.</i> —For the purposes of this section, dereliction of duty by a police officer shall also include the following: (i) failure to provide protection to a victim of lynching; (ii) failure to act upon apprehended lynching; (iii) refusing to record any information under sub-section (1) of section 154 of the Code of Criminal Procedure, 1973 relating to the Commission of an offence under this Act; and (iv) failure to perform his duties under sections 3, 4 and 5 of this Act.	20 25 2 of 1974
Punishment for dereliction of duty by Police Officer.	12. Notwithstanding anything contained in any other law being in force, whoever being a police officer is guilty of dereliction of duty shall be punished with imprisonment of one year, which may extend to three years, and with fine which may extend to fifty thousand rupees.	30
Dereliction of duty by District Magistrate.	13. Whoever being a District Magistrate authorised to act under any provisions of this Act— (a) exercised the lawful authority vested in him under this Act in a mala fide manner, which causes or is likely to cause harm or injury to any person or property; or (b) wilfully omits to exercise lawful authority vested in him under this Act and thereby fails to prevent the commission of any act of lynching, shall be guilty of dereliction of duty	35 40
Punishment for dereliction of duty by District Magistrate	14. Whoever being a District Magistrate is guilty of dereliction of duty shall be punished with imprisonment for a term of one year which may extend to three years, and with fine which may extend to fifty thousand rupees.	
Punishment for enforcing a hostile environment	15. Whoever contributes or enforces a hostile environment on a person or a group of persons, shall be punished with imprisonment for six months.	45

CHAPTER VI

INVESTIGATION, PROSECUTION AND TRIAL

7 of 1974	16. The provisions of the Code of Criminal Procedure, 1973, shall apply to this Act, save and except as amended or supplemented to the extent provided under this Chapter.	Application of Code of Criminal Procedure, 1973.
5	17. Unless otherwise specified, all offences specified under this Act, shall be cognizable, non-bailable and non-compoundable.	Offences to be cognizable, non-bailable and non-compoundable.
	18. No police officer below the rank of Inspector of Police shall investigate any offence committed under this Act.	Investigation by senior Police Officers.
2 of 1974.	19. The provisions of sections 196 and 197 of the Code of Criminal Procedure, 1973 shall not apply to offences by police officers and the Court may take cognizance of such offence when satisfied that the said offence has been committed.	Sanction not required for offences under the Act.
2 of 1974.	20. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, or in any other law for the time being in force, the offences specified under this Act shall be tried by designated Judges appointed under this Act.	Cases triable by Designated Judges.
15	21. (1) The appropriate Government by notification in the Official Gazette, appoint as many Designated Judges in consultation with the Chief Justice of the High Court as it may be necessary to try offences punishable under this Act.	Power to appoint Designated Judges.
2 of 1974. 20	(2) A person shall not be qualified for appointment as a Designated Judge or Additional Designated Judge under this Act unless he or she is or has been a Sessions Judge under the Code of Criminal Procedure, 1973.	
2 of 1974.	22. (1) In trying the accused persons, the Designated Judge shall follow the procedure for the trial of warrant cases prescribed by the Code of Criminal Procedure, 1973.	Procedure and power of the Designated Judge.
25	(2) The provisions of the Code of Criminal Procedure, 1973, shall, so far as they are not inconsistent with this Act, apply to the proceedings before a Designated Judge; and for the purposes of the said provisions, the Court of the Designated Judge shall be deemed to be a Court of Session.	
2 of 1974	(3) When trying the accused person, a Designated Judge may also try any offence, other than an offence specified under this Act, with which the accused may, under the Code of Criminal Procedure, 1973, be charged at the same trial if the offence is connected with the offence under this Act.	
30	(4) If, in the course of any trial under this Act, it is found that the accused person has committed any other offence, the Designated Judge may, whether such offence is or is not an offence under this Act, try such person of such offence and pass any sentence authorised by law for the punishment thereof.	
2 of 1974. 35	(5) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 a Designated Judge shall hold the trial of an offence on day-to-day basis save and except for reasons beyond the control of parties:	
40	Provided that where a Designated Judge is unable to hold the trial of the offence on a day-to-day basis, the reasons for the same, shall be recorded in writing by the Designated Judge.	
	(6) In so far as reasonably possible, all statements of victims and witnesses should be recorded within a period of one hundred and eighty days from the date of incident.	

(7) In so far as reasonably possible, it shall be the endeavour of the Court to ensure that any witness is not required to attend court on more than two dates of hearing.

Rights of
victims and
witnesses
during trial.

23. (1) A Designated Judge may, on an application made by a witness in any proceedings before it or by the Public Prosecutor in relation to such witness or on its own motion, take such measures as it deems fit for keeping the identity and address of the witness secret. 5

(2) A victim shall have the right to reasonable, accurate, and timely notice of any court proceeding and shall be entitled to be heard at any proceeding under this Act in respect of bail, discharge, release, parole, conviction or sentence of an accused or any connected proceedings or arguments and file written submissions on conviction, acquittal or sentencing.

(3) The Superintendent of Police, or officer designated by him or her shall inform the victim in writing about the progress of investigations into the offence, whether or not the offender has been arrested, charge-sheeted, granted bail, charged, convicted or sentenced, and if a person has been charged with the offence, then the name of the suspected offender. 10

(4) The victim shall have the right to receive a copy of any statement of the witness recorded during investigation or inquiry, and a copy of all statements and documents filed under section 173 of the Code of Criminal Procedure, 1973 including the charge-sheet or closure report submitted by police. 15
2 of 1974.

(5) A victim shall be entitled to receive free legal aid if he or she so chooses and to engage any advocate who he or she chooses from among those enrolled in the legal aid panel under the Legal Services Authorities Act, 1987 and the Legal Aid Services Authority established under the said Act shall pay all costs, expenses and fees of the advocate appointed by the victim or informant in accordance with relevant rules. 20 39 of 1987.

(6) Notwithstanding anything contained in any other law being in force, the Designated Judge trying a case may permit the prosecution to be conducted by any advocate recommended by the victim: 25

Provided that no person, other than the Advocate-General or Government Advocate or a Public Prosecutor or Assistant Public Prosecutor, shall be entitled to conduct the prosecution without the prior approval of the Designated Judge.

(7) Where the prosecution is conducted by an advocate recommended by the victim, the expenses arising out of such service, shall be borne by the appropriate Government. 30

(8) It shall be the duty and responsibility of the appropriate Government for making arrangements for the protection of victims and witnesses against any kind of intimidation, coercion or inducement or violence or threats of violence.

(9) The appropriate Government shall inform the concerned Designated Judge about the protection provided to any victim, informant or witness and the Designated Judge shall periodically review the protection being offered under this section and pass appropriate orders. 35

(10) It shall be the duty of the Investigating Officer to record the complaint of victim, informant or witnesses against any kind of intimidation coercion or inducement or violence or threats of violence, whether given orally or in writing and copy of the same shall be sent to the Designated Judge within twenty-four hours of recording it. 40

Constitution
of review
committee.

24. (1) Notwithstanding anything contained in the Code of Criminal Procedure Act, 1973, every case, registered in connection with an offence under this Act and where the Investigating Officer does not file a charge sheet within a period of three months from the date of registration of the First Information Report, shall be reviewed by a committee headed by an officer of the level of an Inspector-General of Police to be constituted by the appropriate Government and such committee may pass orders for a further investigation by another officer not below the rank of Deputy Superintendent of Police wherever it comes to the conclusion that, having regard to the nature of investigation already carried out, such investigation would be necessary. 45
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(2) The Committee constituted under sub-section (1) may also review cases of such offences where the trial ends in acquittal and issue orders for filing appeal, wherever required.

(3) The committee shall submit a report of its findings and action taken in each case or cases to the Director General of Police.

CHAPTER VII

RELIEF & REHABILITATION

25. (1) The appropriate Government through the office of the level of Chief Secretary shall provide Compensation to victims of lynching within thirty days of the incident.

Duty to provide compensation.

(2) Where the death of a person has occurred as a consequence of lynching, the compensation for such death shall be paid to the next of kin of the deceased.

(3) While computing compensation, the appropriate Government must give due regard to the bodily injury, psychological injury, material injury and loss of earnings including loss of opportunity of employment and education, expenses incurred on account of legal and medicinal assistance:

Provided that in no case of death caused due to lynching, should the compensation given be less than twenty five lakh rupees.

26. (1) Where the offence under this Act has led to displacement of the victims from their residence, the appropriate Government shall arrange for the accommodation of the victims and take all necessary steps to rehabilitate such victims.

Displacement.

(2) Where the offences under this Act, has to led to the displacement of more than fifty persons, the appropriate Government shall setup relief camps in the manner specified under Section 27.

27. (1) In accordance with sub-section 2 of section 27, the appropriate Government shall establish relief camps in safe locations for all victims.

Establishment of relief Camps.

(2) Relief camps under sub-section (1) shall continue to be operated by the appropriate Government until such persons return to their original habitations, or are resettled in a new suitable location.

(3) Relief camps established under sub-section (1) shall, at the minimum, regardless of the circumstances and without discrimination, provide such persons with:

(a) basic shelter which is appropriate and adequate to protect the residents of the camps from extremes of the weather, and which provides due privacy especially to women and girls;

(b) twenty four hour security at the relief camp;

(c) adequate nutritious and culturally appropriate food;

(d) potable drinking water;

(e) adequate clothing which is culturally appropriate and sufficient to protect the residents of the camp from extremes of weather;

(f) essential medical services including antenatal and postnatal care of expectant mothers, paediatric care and emergency and rehabilitative services for the injured and referral services wherever necessary;

(g) adequate sanitation;

(h) psycho-social and trauma counseling and psychiatric services;

(i) child-care services for infants and small children;

(j) educational facilities for children;

(k) special facilities and assistance, as may be necessary and reasonable for the medical condition and treatment of certain residents of the relief camps, as children, especially unaccompanied minors, expectant mothers, mothers with young children, female heads of households, elderly and disabled persons with special needs;

CHAPTER VIII

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APPEALS

Appeals.

28. Notwithstanding anything contained in the Code of criminal procedure, 1973;

2 of 1974

(i) an appeal shall lie as a matter of right from any judgment, sentence or order, not being interlocutory order, of a Designated Judge to the High Court both on facts and on law; and

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(ii) Every appeal under this section shall be preferred within a period of sixty days from the date of the judgment, sentence or order appealed from:

Provided that the High Court may entertain an appeal after the expiry of the said period of sixty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of sixty days.

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CHAPTER IX

MISCELLANEOUS

Power to remove difficulties.

29. If any difficulty arises in giving effect to the provisions of this Act, the Central Government, may by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removing the difficulty.

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Act to be in addition to any other law.

30. The provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being in force except to the extent the provisions of other laws are inconsistent with the provisions of this Act.

Power to make rules.

31. The Central Government shall have the power to make rules to give effect to the provisions of this Act.

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STATEMENT OF OBJECTS AND REASONS

The idea of India, as envisaged by our founding fathers, is of one land embracing many, a nation that may endure differences of caste, creed, colour, conviction, culture, cuisine, costume and custom and continue to maintain its composition as a pluralistic democracy, the underlying seamless web that unites India as a sovereign, socialist, secular, democratic republic. Article 21 of the Constitution of India guarantees every person the right to life and personal liberty which includes the right to a dignified existence, in celebration of one's choices and social identity.

The freedom of speech and expression under article 19 of the Constitution, which includes the freedom to express one's identity and choices without fear of repercussions, is the embodiment of the freedom that the makers of modern India dedicated their lives for. Every Indian has the right to a dignified existence irrespective of their religion, race, caste, sex, place of birth, language, dietary practices, sexual orientation, political affiliation, ethnicity.

The rising spate of vigilantism and mob lynching on the basis of one's individual identity and choices threatens the notion of an all-embracing India and is a direct threat to the Constitutional ethos of our country. This, therefore, necessitates the need for a special law to aid vulnerable individuals and communities.

The act of wilful omissions and commissions by the custodians of the State, which facilitates mob lynching, must be recognized as a criminal act under the eyes of the law. The State must act as the bulwark of the freedoms enshrined in the Constitution of India, and special procedures are required to ensure an effective and independent prosecution of crimes, to deter the growing number of vigilante groups which act with impunity, in contempt of the secular fabric of India.

Therefore, there is an urgent requirement to re-enforce the founding values of our nation through special laws and procedure to curb mob lynching and related violence against an individual Indian citizen's identity.

Hence this Bill.

K.T.S. TULSI

FINANCIAL MEMORANDUM

Clause 21 of this Bill provides for the appointment of Designated Judges to try offences under this Bill. Sub-clause 6 of Clause 23 of this Bill also mandates the appropriate governments to remunerate the expenses arising out of the prosecution in the manner set forth under such provision. Clause 25 to 27 of this Bill mandates various forms of compensatory, reliefs and rehabilitation measures which need to be undertaken by the appropriate Governments. The maintenance of convicts and under trials, under this Bill, in the prisons of States and Union Territories will also require certain expenses. The expenditure relating to States shall be borne out of the Consolidated Funds of respective States. The expenditure relating to Union territories shall be incurred from the Consolidated Fund of India. The Bill, therefore, if enacted would involve expenditure from the Consolidated Fund of India. It is estimated that a recurring expenditure of about rupees two hundred crore per annum would be involved from the Consolidated Fund of India. A non-recurring expenditure of about rupees ten crore is also likely to be involved.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 31 of the Bill empowers the Central Government to make rules for carrying out the purposes of this Bill. As the rules will relate to matters of detail only, the delegation of legislative power is of a normal character.

RAJYA SABHA

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BILL

to provide for effective protection of the Constitutional rights of vulnerable persons, to punish acts of lynching, to provide for designated courts for the expeditious trial of such offences, for rehabilitation of victims of lynching and their families and for matters connected therewith or incidental thereto.

(Shri K.T.S. Tulsi, M.P.)