

A FRAMEWORK TO COUNTER MOBILISED VIOLENCE

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Proposed Solutions for Countering Mobilised Violence

Mobilised violence can be better targeted by making a few specific changes to the legal instruments currently in place to counter such incidents.

The two primary recommendations for countering mobilised violence are set out below:

- 1. Creation of a law that targets groups engaging in mobilised violence and not just individual perpetrators of violence.*
- 2. Refining the scope of hate speech under the IPC to focus on the incitement of violence.*



Why is a legal intervention necessary?

1. Incidents of mobilised violence have massive costs to society. For example, the cost due to cessation of economic activity for one day in the India can be to the tune of INR 20,500 crore.
2. Existing laws against mobilised violence have significant weaknesses that compromise their enforcement.

The costs to society from an incident of mobilised violence include:

1. Loss of life;
2. Damage to property;
3. Cessation of economic activity; and
4. Damage to regional reputation that hinders future growth.

Existing laws fall short because they:

1. Are overly broad or vague in their scope and application;
2. Have insufficient procedural safeguards to prevent abuse; and
3. Don't target the leaders of groups committing mobilised violence nor do they effectively target the groups themselves.



What is ‘mobilised violence’?

“Acts of violence perpetrated by multiple people under the aegis of a group, where the purpose of the violence is to achieve an identified political objective”

In India, the popular term for such acts of violence is ‘mob violence’. But this term suggests that the violence is spontaneous and uncontrolled. The use of the term ‘mobilised violence’ conveys elements of premeditation and oversight involved in these acts of violence.

Two features of ‘mobilised violence’:

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**, and is often accompanied by public rhetoric.

Explanation - ‘Political purpose’ does not refer to party politics but refers to the aim of the group to influence the exercise of lawful rights and obligations by State authorities and private parties. This may relate to issues of linguistic identity, religion, regional sharing of resources, cultural practices, etc.



What is not 'mobilised violence'?

There are many instances of violence committed by multiple people that do not qualify as mobilised violence. This may be either because they:

1. Are not committed by people who identify as being part of the same group; OR
2. Are not intended to achieve a political purpose.

Mobilised Violence

Violence committed by groups:

1. On the basis of religion, ethnicity, culture, language or other political ends, e.g. – agitation for a Gorkhaland State in West Bengal in 2017.
2. Against artists, including painters, writers, musicians, filmmakers, etc. in opposition to their work, e.g. – the protests against the movie Padmaavat.
3. Protesting against State actions, e.g. – fallout from the Supreme Court's order on Cauvery water-sharing.

Not Mobilised Violence

Violence committed by:

1. Organised crime outfits, e.g. – the actions of the group led by the dacoit Veerappan, in the forest areas of Karnataka and Tamil Nadu.
2. Instruments of the State in the course of their official functions, e.g. – the violence against protestors of a copper smelting factory in Thoothukudi in 2018.
3. Individuals during spontaneous outbreaks of violence, e.g. – bar fights.



What should the law target?

There are two characteristics of ‘mobilised violence’ that must be considered while devising solutions:

1. The **structured grouping** of the perpetrators of such violence.
2. Any accompanying **expression instigating the violence**.

These characteristics offer two approaches to counter mobilised violence:

Approach 1. Structured Grouping → Assign liability to groups

Members of a group often commit mobilised violence to further the group’s goals. While members of the group may get punished in the aftermath of an incident, the entire group often does not get punished despite having the resources and having provided the platform for individuals to engage in violence. Ensuring that the group also faces criminal liability will help deter them from being involved in mobilised violence.

Approach 2. Expression instigating violence → Refine the provisions on hate speech in the Indian Penal Code, 1860 (IPC)

While the very act of mobilised violence may be sufficient to convey its political purpose, it can also be accompanied by some expression. This may either be expression instigating the violence before the act, or an expression condoning the violence thereafter.



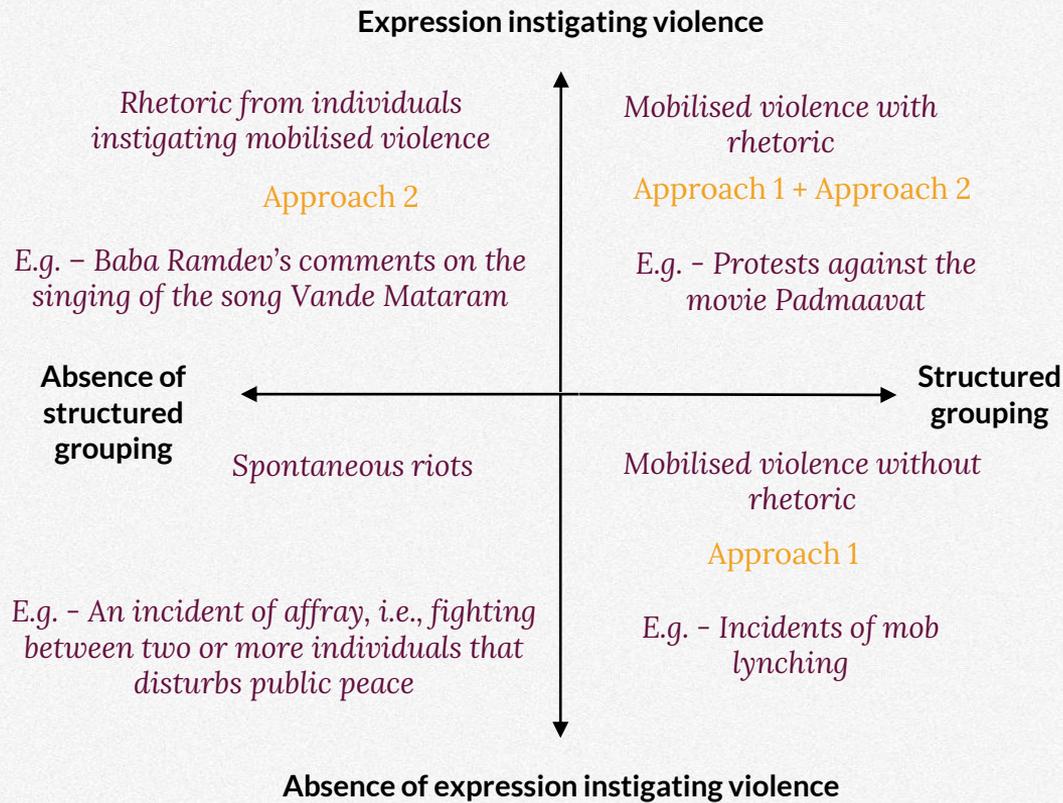
Application Framework

The following framework illustrates the usage of the two approaches. It has two main axes: one signifying the presence or absence of **structured grouping**, and the other the presence or absence of an **expression instigating violence**. Together, these give rise to four scenarios in which to apply the two approaches.

Approach 1: Assigning Liability to Groups

Approach 2: Refining the provisions on
hate speech in the IPC

Note that these approaches are not mutually exclusive.





Approach 1: Assign liability to groups

The rationale for assigning liability to groups instead of individuals is as follows:

1. Groups often have more assets than the individuals. These can be used to pay compensation for any damage caused by the groups.
2. It is easier for law enforcement to focus on one entity than on its members in their individual capacity.
3. A group might enjoy perpetual existence detached from its members, allowing it the room to operate even if some of its members are incarcerated.

Approach 1 has four different recommendations:

1. Passage of a new law to regulate groups that repeatedly engage in mobilised violence.
2. Introduction of civil liability for groups for damage caused to property.
3. Criminalisation of drilling and arms training.
4. Targeting leaders and organisers of mobilised violence.



1a. Passage of a new law

The regulation of groups engaging in mobilised violence is preferable to an outright prohibition on their existence or their membership. A new law should thus not target individual members, but merely the conduct of the groups themselves.

1. The law will rely on the mechanism of a Watch List. Once it is established that a certain number of members of a group have engaged in mobilised violence OR the group's leaders have instigated or publicly condoned mobilised violence, the group will be put on the Watch List.
2. Once the group is placed on the Watch List it will be treated differently under the eyes of the law, but still be allowed to continue its lawful activities. This will be subject to its compliance with a host of additional measures. These include:
 - Submitting a security deposit to cover costs for past and future damages caused by its members.
 - Additional regulations for its public activities.
 - Subjecting the leadership of the group to a combination of strict and vicarious liability for any mobilised violence committed by its members in the future.



1b. Civil liability for property damage

There are many reasons to legislate on increasing civil liability for property damage caused by mobilised violence:

1. Currently, civil liability is either limited under statutory law or weak under tort law.
2. Victim compensation is extremely limited.
3. There is no settled mechanism to determine the value of the compensation and how it is to be distributed.

The Prevention of Damage to Public Property Act, 1984 should be amended to cover private property as well as provide for punitive and exemplary damages. In addition, it must account for the following features:

1. Such cases should be heard by a specialised court that is assisted by a Claims Commission and accompanied by a separate prosecutorial and investigative wing.
2. The liability should be jointly and severally borne by the perpetrators as well as the group itself, including the leadership.
3. Victim compensation should not be contingent on the perpetrators' ability to pay. The State should first, given its failure to stop the violence, pay for the claims in a codified, non-ad hoc manner and adjust it from the perpetrators.
4. Remove archaic laws providing collective liability of all inhabitants of an area for damage caused by riots in that area.



1c. Criminalise drilling and arms training

Perpetrators of mobilised violence who are part of a group have often learnt how to actually commit violence from training conducted by the group itself.

The provisions in the law currently require prosecution of militia drilling and arms training to prove either that:

1. These activities were intended to be used against a specific community and that that community felt a sense of fear as a result (S. 153A of the IPC);

or

2. These activities were in contravention of an order by an executive magistrate under S.144A of the Code of Criminal Procedure, 1973 (CrPC) (S.153AA of the IPC).

Instead:

1. There should be no requirement to prove the effective intimidation of a specific community. All acts of militia drilling and arms training should be made punishable.

2. Exceptions, if any, to this position should be narrowly construed, such as, for sporting activities. The law should also require a license for any organisation trying to conduct these activities.



1d. Target leaders and organisers of mobilised violence

People committing mobilised violence are rarely the ones actually mobilising it. The leaders and instigators of mobilised violence tend to escape legal action either because the law doesn't target them specifically or because it is not easy to prove abetment.

The Prevention of Damage to Public Property Act, 1984 should be amended to:

1. Also assign liability to people who call for violent action that results in the commission of an offence under the Act by an unlawful assembly.
2. Hold the leaders of any organisation liable for the damage caused by the actions of the organisation's members.

These presumptions should be narrowly drawn out with sufficient exemptions and with reduced penalties as it circumvents the basic assumption of 'innocent until proven guilty'.



Approach 2: Refining hate speech provisions in the IPC

Mobilised violence can be instigated through the use of speech and expression. Further, the political purpose that propels mobilised violence can sometimes also be achieved by simply using the **threat** of use of force. While the IPC already has provisions on hate speech that are meant to address these situations, they are overly broad and have a history of abuse.

Approach 2 sets out the following changes:

1. Removal of harm to a group as a requirement under current hate speech provisions and substituting it for incitement to violence. This produces two benefits:
 - a) Narrows the scope by eliminating the vague standards that currently exist, including that of hurting religious sentiments and promoting enmity between groups; and
 - b) Extends the protection under the provisions to individuals instead of focusing on specific groups.
2. Improving the deterrent effect of the change by ensuring that a conviction under such laws will lead to an automatic disqualification to run for elections. This is particularly important since speech and expressions instigating violence can be used to gain political capital.



Increasing institutional capacity

The reforms set out here are designed to improve the capacity of State institutions in combating mobilised violence. These will complement the two primary approaches discussed earlier by ensuring their effective implementation.

1. **Creation of Mobilised Violence Observatories.**

The lack of data on mobilised violence hinders the design and implementation of any policy measures seeking to curb it. Specialised Mobilised Violence Observatories will help address this.

2. **Appointment of a Special Public Prosecutor.**

Public prosecutors face significant hurdles to successfully and effectively carry out their duties. These include executive interference, the threat of dismissal, and lack of adequate remuneration. A Special Public Prosecutor for mobilised violence who functions directly under the aegis of the Advocate General and outside the regular prosecutorial service will be beneficial.

3. **Reducing executive interference in prosecutions.**

Many instances of mobilised violence require executive sanction under the CrPC. While this measure helps prevent frivolous and vexatious litigation, it also presents a hurdle given the political nature of mobilised violence. This sanction should instead be provided by an independent body.



Conclusion

Mobilised violence is inimical to the rule of law and imposes significant costs on society. Further, the existing legal instruments are inadequate to effectively counter mobilised violence and require changes.

The changes discussed here call for a shift in the way mobilised violence is traditionally approached, to widen the law's gaze from the individual perpetrators to the individuals and organisations fostering and instigating the violence. Doing so would help law enforcement agencies better target mobilised violence in the country.



Further Reading

The recommendations set out in this document are part of the report **A Framework for Countering Mobilised Violence**, published in December 2018 by the Takshashila Institution and the Vidhi Centre for Legal Policy. A copy of the report can be accessed [here](#).