

## ARE SPECIFIC LAWS THE ANSWER TO INDIA'S GROWING CRIME SCENE?

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### Abstract

*The article looks into the menace of growing crime rate in the nation and delves into the debate of enacting new laws for changing times or effectively enforcing the existing general laws namely the Indian Penal Code 1860. The article is critical of the nonchalant conduct of the executive and at the ease through which legislature brings about new laws. The article tries to cull out instances where specific laws have been grossly misused and the rationale behind its enactment has back fired. The article tries to establish the fact that specific laws cannot solve our issues by relying local and international examples where such acts have been a point of chaos. The article is divided into five chapters comprising of relevant examples and case laws. At first, the article discussed a recent National crime record bureau report on increasing crime rate in the country, especially the national capital. Numbers are analysed from the report to arrive at a conclusion and address the issue at hand. Secondly, it is discussing about the history of the code and the rationale behind in enacting certain specific acts. Effectiveness of the IPC and prominent precedents discussing the issue at hand are mentioned in this chapter. Thirdly, it discussing at length with examples and precedents, how specific laws are misused in the nation. The chapter delves into the recent amendment to SC/ST Act 1989, MCOCA 1999 and its misuse by police department. How RICO Act 1969 (U.S legislation against racketeering) is misused by businesses is also examined. Fourthly, it speaks about the growing menace of mob – lynching in the nation and the demand to bring a specific law by rights activists to combat it. The chapter tries to bring a solution to the issue within the contours of the code by adding a non - bailable provision to combat the crime. Finally, it examines the concept of executive discretion arising out of innumerable specific laws and its effect on society. The chapter enlists arguments against specific laws using a recent example of a prey to illicit decision making by the executive and the need to avert such situations in future by sticking on to general laws.*

**Keywords:** SC/ST Act, MCOCA, RICO Act, Indian Penal Code, Criminal Law in India

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## INTRODUCTION

In one of the recent National Crime Records Bureau (NCRB) report, it has been claimed that crimes in India saw a ‘marginal increase’ in the first 45 days of the year 2018 as compared to the corresponding period of the previous year.<sup>1</sup> Collating data from the official statistics, Financial Times has reported that the cases of murder, abduction, rape, dowry death, and fatal accidents have seen a spike as compared to the last year.<sup>2</sup> The government has been unable to check crimes even in the national capital. The report cites many abduction cases, and dowry death cases to support the data. It further adds that the country on an average is witnessing a death due to dowry every second day.<sup>3</sup> The spike in crimes is a major concern, as the crime rate in India was already quite high. It is worth mentioning here that, in 2016, according to the NCRB data, the total crimes were recorded to be 2.97 million (1 million is 10 lakh) while the crime rate was found to be 379 crimes per lakh population.<sup>4</sup>

A 2017 report by Global Peace Index had claimed India to be the fourth most dangerous country for women travelers. Gender Vulnerability Index 2017 compiled by Ministry of Women and Child Development found Bihar, Delhi, Uttar Pradesh, and Jharkhand to be the bottom four in terms of safety. The data

highlight the urgent need to ensure proper law and order situation in the country.<sup>5</sup> There has been a huge hue and cry from activists throughout the country to overhaul the system, mainly by bringing specific laws to arrest the trend of ever increasing crime rates. Even the Honourable Supreme court has been mindful of such developments.<sup>6</sup>

This article will look into the need of such extensive measures by analyzing the pros and cons of such specific laws already existing in the Indian legal infrastructure with an overview on recent clamour for specific law against mob – lynching. The article also seeks to understand the outcome of specific laws and its effect on society to arrive at a conclusion regarding their efficacy.

### IS THE EFFICACY OF INDIAN PENAL CODE WANING?

The Indian Penal Code (IPC) is the official criminal code of India. It is a comprehensive code intended to cover all substantive aspects of criminal law. The code was drafted in 1860 on the recommendations of first law commission of India under the Chairmanship of Lord Thomas Babington Macaulay. It came into force in British India during the early British Raj period in 1862. Contributions of Justice Barnes

<sup>1</sup> NCRB, Crime in India, Revised Proforma, (Aug 2018).

<sup>2</sup> Crimes in India rise in 2018 as compared to last year, Financial Express, Bengaluru, 26<sup>th</sup> Feb 2018 at 11

<sup>3</sup> Supra at 1

<sup>4</sup> Supra at 2

<sup>5</sup> Supra at 2

<sup>6</sup> Apoorva Mandhani, Lynching: Parliament May Create A Special Law after S.C directions, live law.in (17 July 2018) [https:// www. livelaw. in/lynching-parliament-may-create-a-special-law-read-supreme-court-guidelines/](https://www.livelaw.in/lynching-parliament-may-create-a-special-law-read-supreme-court-guidelines/)

Peacock in making the final draft of the code should not be underscored as Lord Macaulay had died before the final document was submitted to the government.

After the fall of British raj, the successor states of the raj: India, Pakistan and later Bangladesh along with Ceylon (Sri Lanka) had inherited the code or modeled their criminal laws in accordance with the code. Specific laws were enacted to meet the challenges faced by the new age rather than enforcing the code more effectively. Supreme Court in *Commercial tax officer, Rajasthan v. M/s Binani Cement Ltd. & Anr.*<sup>7</sup> has upheld the concept of harmonious construction i.e. When there is an apparent conflict between two independent provisions of law, the special provision must prevail.

The Information Technology act, 2000 was passed to deal with electronic commerce and cybercrimes. Such crimes include cheating through internet services, using offensive language over online comments and inciting violence, hacking, misuse of digital signatures and passwords. All the above-mentioned acts can inherently be tried using IPC. Passing of the specific act highlights the incompetence of the executive arm of the government. Likewise, various state legislations to curb organized criminal activity points out to the

fallacy of police in gathering evidence using existing laws.

It is noteworthy to mention that the code has been only amended 76 times in its 159 years of existence, while our constitution has reached its 103<sup>rd</sup> amendment within seventy years. Nicholas Phillips, Justice of Supreme Court of United Kingdom applauded the efficacy and relevance of IPC while commemorating 150 years of IPC. He also stated that, Modern crimes involving technology unheard of during Macaulay's time fit easily within the Code mainly because of the broadness of the Code's drafting. Justice Philips had the view that, the Code is universally acknowledged as a cogently drafted code, ahead of its time.<sup>8</sup>

## MISUSE OF SPECIFIC LAWS

### SC/ST Act 1989

The Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989 is an Act of the Parliament of India enacted to prevent atrocities against scheduled castes and scheduled tribes. Recognizing the continuing gross indignities and offences against Scheduled Castes and Tribes, the Parliament passed the 'Scheduled Castes and Schedule Tribes (Prevention of Atrocities) Act 1989. It was enacted due to the questionable enforcement of existing laws.

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<sup>7</sup> [2014] 3 S.C.R. 1

<sup>8</sup> IPC's endurance lauded, The New Indian Express, Bhubhaneshwar, 04th May 2011 at 7

Section 18 of the act has always been at the centre of controversy. The section allowed for arrest of a person without preliminary enquiry and refusal of anticipatory bail under sec.438 crpc. This section has been misused throughout the country to mete out personal vendetta, as the accused will have to spent time in jail till a court of law grants bail and orders his release as immediate arrest cannot be avoided.

The anti-atrocities law, which protects Scheduled Castes and Scheduled Tribes from casteist slurs and discrimination, has become an instrument to “blackmail” innocent citizens and public servants, the Supreme Court observed in a judgment on Tuesday.<sup>9</sup> Issuing a slew of guidelines to protect public servants and private employees from arbitrary arrests under the Atrocities Act, the court directed that public servants can only be arrested with the written permission of their appointing authority. In the case of private employees, the Senior Superintendent of Police concerned should allow it. Besides this precaution, a preliminary inquiry should be conducted before the FIR is registered to check whether the case falls within the parameters of the Atrocities Act and if it is frivolous or motivated.<sup>10</sup>

The court referred to how public administration has been threatened by the

abuse of this Act. Public servants find it difficult to give adverse remarks against employees for fear that they may be charged under the Act.<sup>11</sup>

While watering down section 18 of the act, the court stated that The Act cannot be converted into a charter for exploitation or oppression by any unscrupulous person or by the police for extraneous reasons against other citizens. Any harassment of an innocent citizen, irrespective of caste or religion, is against the guarantee of the Constitution. This court must enforce such a guarantee. Law should not result in caste hatred<sup>12</sup>

### **MCOCA 1999**

Maharashtra Control of Organised Crime Act, 1999 (MCOCA) is a law enacted by Maharashtra state in India in 1999 to combat organised crime and terrorism. The preamble to MCOCA says "the existing legal framework, i.e. the penal and procedural laws and the adjudicatory system, are found to be rather inadequate to curb or control the menace of organised crime. Government has, therefore, decided to enact a special law with stringent and deterrent provisions including in certain circumstances power to intercept

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<sup>9</sup> Krishnadas Rajgopal, SC/ST Act being used for blackmail, says Supreme Court, THE HINDU, New Delhi, March 20, 2018 at 4

<sup>10</sup> Dr.Subhas Mahajan v State of Maharashtra, Appeal (Crl.), 416 of 2018

<sup>11</sup> ibid

<sup>12</sup> Supra at 10

wire, electronic or oral communication to control the menace of organised crime."<sup>13</sup>

Unlike normal law the confessions before senior police officers are admissible, not only against the accused giving the confession but also against the other accused in the same case.<sup>14</sup> There is no provision for granting anticipatory bail for 6 months to the accused.<sup>15</sup> Section 18 of the act makes custodial confessions, which may be extracted using third degree measures admissible before court of law, thereby tearing away the constitutional guarantee under art 21. Criminal or not, an accused deserves basic human rights. Such rights are the tenets on which every society is built.

A Delhi sessions court while granting bail to cricketer Sreesanth charged under various provisions of MCOCA had reprimanded the police department against invoking stringent MCOCA on flimsy grounds and curtailing his freedom and liberty.<sup>16</sup> The court reminded the police that, the act should only be scarcely used and should be mindful of the huge powers it enjoys under act.

Organized crimes are inherently parts of a crime already defined in IPC. The law enforcement agencies are duty bound to charge crimes within the code, with the

executive failing to get convictions under IPC and crpc, such specific laws have been rampantly used to hide the inefficiency of the police machinery.

### **RICO Act 1970**

The Racketeer Influenced and Corrupt Organizations Act, 1970 commonly referred to as the RICO Act or simply RICO, is a United States federal law that provides for extended criminal penalties and a civil cause of action for acts performed as part of an ongoing criminal organization. The RICO Act is a specific law focusing on racketeering and allows the leaders of a syndicate to be tried for the crimes they ordered others to do or assisted them in doing, closing a perceived loophole that allowed a person who instructed someone else to, for example, murder, to be exempt from the trial because they did not actually commit the crime personally.<sup>17</sup>

When Congress passed the Racketeer Influenced and Corrupt Organizations Act (RICO) in 1970, it wanted to encourage individuals and corporations to join the battle against organized crime. It did so by giving private parties the right to file civil suits under RICO for triple damages and attorney's fees. Unfortunately, the effect has been quite

<sup>13</sup> Maharashtra Control of Organised Crime Act, 1999

<sup>14</sup> Sec 18 of the Act

<sup>15</sup> Sec 20 (4) of the Act

<sup>16</sup> Sreesanth and others get bail, court slams Delhi Police for invoking MCOCA, Times of India, 11 June 2013, at 12

<sup>17</sup> Amanda Hale, Understanding the RICO act, Jameseducationcentre.com, 03 Dec 2013, <https://www.jameseducationcenter.com/rico-act/>

different from what Congress intended. Most private RICO suits have been aimed at legitimate businesses. The effects on businesses defending themselves against federal securities suits have been particularly striking. By making securities fraud a "racketeering" offense, RICO is altering the balance of rights and remedies established over the last 50 years by Congress, the courts, and the Securities and Exchange Commission. For example, federal securities laws limit awards to actual damages. RICO opens the way for triple damages. RICO's civil liability provisions have become more of a weapon against legitimate business than against organized crime. Most often, RICO suits involve ordinary commercial litigation that does not include a pattern of repeated criminal conduct. An American Bar Association task force study found that 77% of the civil actions under RICO involve securities or other fraud in a commercial or business setting. Only 9% involve accusations of criminal activity generally associated with professional criminals, such as arson, bribery, embezzlement, extortion, theft, and political corruption.<sup>18</sup> RICO is the perfect example on how a specific law can be misused by deviating from its legislative intent.

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<sup>18</sup> Jhon Shad, Why RICO needs reforming, Fortune magazine. com, 03 March 1986, [http://archive.fortune.com/magazines/fortune/fortune\\_archive/1986/03/03/67184/index.htm](http://archive.fortune.com/magazines/fortune/fortune_archive/1986/03/03/67184/index.htm)

## **MOB LYNCHING AND THE RECENT CLAMOUR FOR A SPECIFIC LAW**

With the National Democratic Alliance (NDA) getting elected to power at New Delhi, the country has witnessed a heightened jingoistic spirit. Fundamentalist groups belonging to a particular sect, sharing common ideology with the most prominent constituent of the alliance has seized the opportunity to spread their ill doctrines. Unchained and unmonitored, these groups with sparse regard for the rule of law has been found barking hateful and schismatic statements in broad daylight. Ill inspired mobs then carry out the group directives knowing very well of support and assurance from the top brass of state machinery. Such Mobs have been known to cause lynching activities in various parts of the nation. In such cases the mob is the judge, jury and the executor.<sup>19</sup>

Rights activists have joined together to demand a specific law to combat the menace. The new law requires the police officer in the jurisdiction to be held liable for every lynching activity and an automatic departmental enquiry initiated against him/her besides making the act non-bailable.<sup>20</sup> As a legitimate term, lynching does

<sup>19</sup> Ujjwal k Chaudhary, Decoding lynching In India, DNA India, 15 Sept 2018 , // [www.dnaindia.com/analysis/column-decoding-lynching-in-india-2640462](http://www.dnaindia.com/analysis/column-decoding-lynching-in-india-2640462)

<sup>20</sup> MASUKA Unveiled: What Does The Anti-Lynching Bill Draft Say? , The quint, 07 July 2017,

not exist in India, but it is rather viewed as the extrajudicial discipline and murder of somebody by a horde. Lynching does not exist in measurable terms either, because the National Crime Records Bureau only gathers information regarding those penal provisions and wrongdoings characterized or defined under the Indian Penal Code.<sup>21</sup>

Mostly, the accused are charged under milder sections of the IPC namely - 341 (wrongful confinement), 323 (voluntarily causing hurt) or 34 (acts done by several persons with common intention) which guarantees bail as a right. The accused has been never found to be charged under stronger non bailable provisions of the code such as 295A (deliberate and malicious acts, intended to outrage religious feelings of any class by insulting its religion or religious beliefs) or 153A (Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony) read with sec 35 IPC (criminal intention).

This calls for an amendment to the code rather than a whole new act. If the IPC is amended to define Mob lynching thereby making it a non bailable crime, will solve the issue to a great extent. Extended jail time and fines amounting to cent percentage of

damage caused will act as a deterrent. NCRB will be enabled to collect data on mob lynching after IPC defines it. A directive from the state home department to charge everyone part of the illicit mob under the newly amended provision will act as a restriction on individual police officers against charging the mob under milder bailable sections. Guidelines by the honourable Supreme court in *Tehseen Poonawalla v Union of India*<sup>22</sup> to check mob lynching by roping in senior police officers of a state needs to be enforced till the last word.

## CONCLUSION

Lavrenti Beria, the infamous head of the Soviet secret police under Joseph Stalin, supposedly once said, "Show me the man and I'll show you the crime." In the Soviet Union, the regime could always find some crime to pin on anyone it chose to target. Every law comes along with its own set of regulations. Similar provisions in different statutes creates a sense of confusion among the law enforcers and general public. Using the vast number of laws, in India the authorities can pin a crime on the overwhelming number of people, if they really decide to. Whether a person get hauled into court or not depends more on the discretionary decisions of law enforcement

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[https:// www. thequint. com/news/masuka-unveiled-anti-lynching](https://www.thequint.com/news/masuka-unveiled-anti-lynching)

<sup>21</sup> Alok Prasanna Kumar, Lynching aren't just murders, *The Quint*, 25 Aug 2018, // [www. quint. com/voices/](http://www.quint.com/voices/opinion/absence-on-data-lynching-modi-government)

[opinion/absence-on-data-lynching-modi-government](http://www.quint.com/voices/opinion/absence-on-data-lynching-modi-government)

<sup>22</sup> Writ Petition (Civil) No. 754 OF 2016

officials than on any legal rule. Recent example of Supreme court absolving Dr. Nambi Narayanan of all charges in the infamous ISRO espionage case is a glaring testimonial of executive action gone awry.<sup>23</sup> It has become difficult or impossible for ordinary people to keep track of all the laws they are subject to and to live a normal life without running afoul of at least some of them. Those who argue for specific laws need to note that the law enforcement agencies remain the same. An ineffective executive with a general law will only evolve into an ineffective executive with a specific law. For things to change in ground, overhaul of the

system from base level is the answer. Specific laws try to find an answer to the challenge by shying away from the actual problem. By creating more specific laws, the rule of law has largely been eclipsed by the rule of chance and the rule of executive discretion. Inevitably, political ideology and partisanship have a major impact on the latter. There is no way to completely eliminate executive discretion over law enforcement or to make the law completely transparent to laypeople.<sup>24</sup> Reducing the number and complexity of law can help us take steps in making a society wherein citizens respect the law, than fear it.

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<sup>23</sup> Vasudha Venugopal, Fought this case for my family: Nambi, Economic Times, 15 Sept 2018, at 3

<sup>24</sup> Ilya Somin, Why the rule of law suffers when we have too many laws, The Washington Post, 02 Oct

2017, [https:// www. washingtonpost. com/news/volokh-conspiracy/wp/2017/10/01/why-the-rule-of-law-suffers-when-we-have-too-many-laws/?noredirect=on&utm\\_term=.25960b22b9b4](https://www.washingtonpost.com/news/volokh-conspiracy/wp/2017/10/01/why-the-rule-of-law-suffers-when-we-have-too-many-laws/?noredirect=on&utm_term=.25960b22b9b4)