

The

Kolkata Gazette
सत्यमेव जयते
Extraordinary
Published by Authority

BHADRA 4]

MONDAY, AUGUST 26, 2019

[SAKA 1941

PART IV—Bills introduced in the West Bengal Legislative Assembly; Reports of Select Committees presented or to be presented to that Assembly; and Bills published before introduction in that Assembly.

GOVERNMENT OF WEST BENGAL

LAW DEPARTMENT

Legislative

NOTIFICATION

No. 953-L.— 26th August, 2019.—The Governor having been pleased to order, under rule 66 of the Rules

of Procedure and Conduct of Business in the West Bengal Legislative Assembly, the publication of the following Bill, together with the Statement of Objects and Reasons and the Financial Memorandum which accompany it, in the *Kolkata Gazette*, the Bill, the Statement of Objects and Reasons and the Financial Memorandum are accordingly hereby published for general information:—

Bill No. 21 of 2019

THE WEST BENGAL (PREVENTION OF LYNCHING) BILL, 2019.

**A
BILL**

to provide for effective protection of the Constitutional rights of vulnerable persons and to prevent the lynching and to punish the acts of lynching in the State of West Bengal and for matters connected therewith or incidental thereto.

WHEREAS it is expedient to provide for effective protection of the Constitutional rights of vulnerable persons and to prevent lynching and to punish the acts of lynching in the State of West Bengal and for matters connected therewith or incidental thereto:

It is hereby enacted in the Seventieth Year of the Republic of India, by the Legislature of West Bengal, as follows :—

*The West Bengal (Prevention of Lynching) Bill, 2019.**(Chapter I.— Preliminary.— Clauses 1, 2.)***CHAPTER I****Preliminary**

Short title, extent and commencement.

1. (1) This Act may be called the West Bengal (Prevention of Lynching) Act, 2019.
- (2) It shall extend to whole of the State of West Bengal.
- (3) It shall come into force on such date as the State Government may, by notification in the *Official Gazette*, appoint.

Definitions.

2. (1) In this Act, unless the context otherwise requires,—
 - (a) “act of violence” means an act punishable under section 7;
 - (b) “Deputy Superintendent of Police” includes Assistant Commissioner of Police in a Police Commissionerate area;
 - (c) “hostile environment” means intimidating or coercive environment that is created against the victim or the family members of the victim or against any witness or any one providing assistance to the witness or victim, which includes being subjected to the following act:—
 - (i) boycott of the trade or business of such person or making it otherwise difficult for him to earn a living; or
 - (ii) extern such person or his family members from the locality where he or his family members have normally been residing as permanent resident; or
 - (iii) public humiliation through exclusion from public services, including education, health and transportation or any act of indignity; or
 - (iv) deprivation or threaten to deprive such person of his fundamental right; or
 - (v) force such person to leave his home or place of ordinary residence or livelihood without his express consent; or
 - (vi) 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;
 - (d) “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 ground;
 - (e) “mob” means a group of two or more individuals;
 - (f) “offensive material” means any printed or digital 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 ground;
 - (g) “Nodal Officer” shall mean a Nodal Officer as provided in section 3 of this Act;
 - (h) “Compensation Scheme” means the West Bengal Lynching Compensation Scheme as may be framed by the State Government under this Act;

The West Bengal (Prevention of Lynching) Bill, 2019.

(Chapter I.— Preliminary.— Clause 2.— Chapter II.— Duties of Nodal Officer, Police Officer and District Magistrate.— Clauses 3, 4.)

- (i) “State” means the State of West Bengal;
- (j) “Superintendent of Police” includes Deputy Commissioner of Police in a Police Commissionerate area;
- (k) “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 relatives, legal guardian and legal heirs;
- (1) “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.

(2) Words and expressions used herein and not defined in this Act but defined in the Code of Criminal Procedure, 1973, or in the Indian Penal Code, 1860, or in the Police Act, 1861, shall have the meanings as respectively assigned to those Acts.

2 of 1974.
45 of 1860.
V of 1861.

CHAPTER II**Duties of Nodal Officer, Police Officer and District Magistrate**

Nodal Officer.

3. (1) The Director General of Police shall appoint a State Co-Ordinator who shall be an officer not below the rank of Inspector General of Police to be called the Nodal Officer to monitor and co-ordinate prevention of lynching.

(2) Notwithstanding anything contained under sub-section (1), the Commissioner of Police, Kolkata, shall within the jurisdiction of Kolkata Police, appoint a Nodal Officer who shall not be below the rank of Additional Commissioner of Police to monitor and co-ordinate prevention of lynching.

(3) The Nodal Officer, so appointed under sub-sections (1) and (2), shall hold regular meetings, at least once a month, with the local intelligence units in the Districts and Commissionerates so as to identify the existence of the tendencies of vigilantism, mob violence or lynching in the area and take steps to prevent instances of dissemination of offensive material through different social media platforms or any other means for inciting such tendencies.

(4) In every District, the Superintendent of Police, and in every Police Commissionerate, the Commissioner of Police or an authorised officer not below the rank of Deputy Commissioner of Police, shall be the Co-Ordinator for the District or the Police Commissionerate, as the case may be, who shall be assisted by an officer not below the rank of Deputy Superintendent of Police or Assistant Commissioner of Police, as the case may be, for taking measures to prevent incidents of mob violence and lynching.

Duties of police officer.

4. (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 and prevent 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 and to take all residual measures to prevent it;
- (ii) act in furtherance of the duty to prevent lynching in accordance with the powers vested in him; and

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*(Chapter II.— Duties of Nodal Officer, Police Officer and District Magistrate.—
 Clause 5.—Chapter III.— Prevention of acts Leading to Lynching.— Clause 6.—
 Chapter IV.— Punishment for Lynching.— Clauses 7, 8.)*

- (iii) make all possible efforts to prevent and eradicate the creation of a hostile environment against a person or group of persons which is targeted in such incidents.

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

Duties of District Magistrate.

5. (1) Whenever the District Magistrate or the Commissioner of Police in the Police Commissionerate area, as the case may be, 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.

(2) The District Magistrate or the Commissioner of Police under sub-section (1) shall take every possible action to the best of his ability to prevent the creation of a hostile environment against a person or group of persons which are targeted in such incidents.

CHAPTER III**Prevention of acts Leading to Lynching**

Duty to prevent lynching.

6. (1) It shall be the 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 his jurisdiction and to that end—

- (i) make all possible efforts to identify patterns of violence in the area under his jurisdiction, that indicate occurrence of targeted violence;
- (ii) obtain information regarding the likelihood of occurrence 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 his duties shall act without any delay in a fair, impartial and non-discriminatory manner.

CHAPTER IV**Punishment for Lynching**

Punishment for offence of lynching.

7. Whoever commits an act 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 three 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 for life, or with imprisonment of either description for a term which may extend to ten years, and with fine which shall not be less than twenty-five thousand rupees and may extend to three lakh rupees;
- (c) where the act leads to the death of the victim, shall be punished with death sentence or rigorous imprisonment for life and with fine which shall not be less than one lakh rupees and may extend to five lakh rupees.

Punishment for conspiracy or abetment or aides or attempts to lynch.

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 he had himself committed lynching.

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(Chapter IV.— Punishment for Lynching.— Clause 9.—Chapter V.— Other Offences and Punishment.— Clauses 10, 11.—Chapter VI.— Investigation, Prosecution and Trial.— Clauses 12-15.)

Punishment for obstructing legal process.

9. Any person who—

- (a) knows or has reasonable cause to believe that any other person is guilty of an offence under this Act, and 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 three years and shall also be liable to fine which may extend to one lakh rupees;
- (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, 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 which may extend to two lakh rupees.

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 which may extend to one year, and with fine which may extend to fifty thousand rupees.

Punishment for enforcing a hostile environment.

11. Whoever contributes or enforces a hostile environment on a person or a group of persons shall be punished with imprisonment which may extend to three years and shall also be liable to fine which may extend to one lakh rupees.

CHAPTER VI**Investigation, Prosecution and Trial**

Application of Code of Criminal Procedure, 1973.

12. The provisions of the Code of Criminal Procedure, 1973, shall apply to this Act. 2 of 1974.

Offences to be cognizable, non-bailable and non-compoundable.

13. Unless otherwise specified in the Code of Criminal Procedure, 1973, all offences specified under this Act, shall be cognizable, non-bailable and non-compoundable.

Investigation by senior police officer.

14. No Police officer below the rank of Inspector of Police shall investigate any offence committed under this Act:

Provided that the Nodal Officer of the State or the Nodal Officer of the Police Commissionerate, Kolkata, as the case may be, under special circumstances, authorise any Sub-Inspector of Police to investigate into the offences under this Act.

Rights of victims and witnesses during trial.

15. (1) The Court 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.

(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.

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(Chapter VI.— Investigation, Prosecution and Trial.— Clause 15.—Chapter VII.— Relief.— Clauses 16, 17.—Chapter VIII.— Appeals.— Clause 18.)

(3) The Superintendent of Police or the Commissioner of Police, as the case may be, or an officer designated by him 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.

(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. 2 of 1974.

(5) A victim shall be entitled to receive free legal aid if he so chooses and to engage any advocate who he chooses from among those enrolled in the legal aid panel under the Legal Services Authorities Act, 1987 and the Legal 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. 39 of 1987.

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

(7) The State Government shall inform the trial Court about the protection provided to any victim, informant or witness and the Court shall periodically review the protection being provided under this section and pass appropriate orders.

(8) It shall be the duty of the police officer to receive and 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 trial Court within twenty-four hours of recording it.

CHAPTER VII**Relief**

Treatment of victim.

16. All hospitals run by the State Government or any local bodies shall immediately provide the first-aid or medical treatment free of cost to the victims and shall immediately inform the police of such incident.

Compensation of lynching.

17. The State Government shall provide compensation to the victim as per the Compensation Scheme.

CHAPTER VIII**Appeals**

Appeals.

18. (1) An appeal shall lie as a matter of right from any judgement, sentence or order, not being interlocutory order, of a trial Court to the High Court both on facts and on law.

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

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.

*The West Bengal (Prevention of Lynching) Bill, 2019.**(Chapter IX.— Miscellaneous.— Clauses 19-21.)***CHAPTER IX****Miscellaneous**

Power to remove difficulties.

19. (1) If any difficulty arises in giving effect to the provisions of this Act, the State Government may, by order, published in the *Official Gazette*, make such provisions not inconsistent with the provisions of this Act as may appear to be necessary for removing the difficulty:

Provided that no such order shall be made under this section after the expiry of two years from the commencement of this Act.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before the House of the State Legislature.

Act to be in addition to any other law.

20. The provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being in force.

Power to make rules.

21. (1) The State Government may make rules for carrying out the purposes of this Act.

(2) All rules made under this section shall be laid, as soon as may be after they are so made, before the House of the State Legislature, while it is in session, for a period of not less than fourteen days, which may comprise in one session or in two successive sessions and, if before the expiry of the sessions in which they are so laid or of the sessions immediately following, the House of the State Legislature makes any modification in any of such rules or resolves that any such rule should not be made, such rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so however, that any modification or annulment shall be without prejudice to the validity of anything previously done thereunder.

STATEMENT OF OBJECTS AND REASONS.

Whereas the Constitution of India guarantees to all persons the right to life and personal liberty and the equal protection of laws, in recent times, there have been trends towards mob lynching in different parts of the country. Supreme Court of India in its Judgement dated 17.7.2018 in Writ Petition (Civil) No. 754/2016 *Tesheen S. Poonawalla Vs Union of India and Others* has recommended for enacting legislation in this regard. Therefore, it is proposed to nip the evil in the bud and to prevent spreading of hatred or incitement to mob lynching by creating special offences against such mob lynching.

(2) The Bill seeks to achieve the aforesaid objectives.

(3) Hence the Bill.

KOLKATA,

The 26th August, 2019.

MAMATA BANERJEE,

Member-in-charge.

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FINANCIAL MEMORANDUM.

There is financial implication involved in giving effect to the provisions of the Bill. Necessary budgetary provision to this effect shall be made in consultation with the Finance Department.

KOLKATA,
The 26th August, 2019.

MAMATA BANERJEE,
Member-in-charge.

By order of the Governor,

SANDIP KUMAR RAY CHAUDHURI,
*Secy. to the Govt. of West Bengal,
Law Department.*