



Analytical Approach to the Offence of Mob Lynching under BNS

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Abstract

A serious social and legal issue in India is mob lynching, which is typically caused by communal tensions, false information, and group-based biases. In the past, the Indian Penal Code (IPC) didn't clearly say that mob lynching was a separate crime. This led to varied judicial responses and poor conviction rates. The Bharatiya Nyaya Sanhita (BNS), 2023, makes mob lynching a crime whether it is based on discrimination based on caste, religion, sex, language, or place of birth. The most important part of this law is Section 103(2). This study looks closely at how the law has changed, the legal framework, and the problems in enforcing the law against mob lynching in India. The article looks at how well BNS has filled in holes in prior laws by comparing it to legal systems in other countries, like the US and South Africa. It also points out important problems, such as the trouble of identifying groups, the burden of proof, and political intervention in prosecution. The report ends by suggesting broad changes to the legislation, such as a separate law against lynching, more responsibility for police, better forensic infrastructure, and regular judicial review to make sure that justice is both easy to get and a deterrent.

Keywords: Mob lynching, Bharatiya Nyaya Sanhita, Section 103(2), hate crime, criminal law reform, group violence.



1. INTRODUCTION

In India, mob lynching has become a serious social and legal problem in recent years that threatens the very underpinnings of constitutional democracy and the rule of law. These crimes usually involve groups of people taking the law into their own hands and carrying out violent public executions or attacks, frequently in the name of religion, caste, or vigilantism. These kinds of events are happening more and more often, and they are getting worse and worse. They are also being extensively shared on social media. They happen for a variety of reasons, including protecting cows, charges of stealing, and accusations of kidnapping children. The event shows that law enforcement is failing and that there are deeper problems in society and divisions in the community (Mandhotra, 2020).

Even though these events were quite serious and happened a lot, the Indian Penal Code, 1860 (IPC) did not have any clear rules that defined or made mob lynching a crime. The law relied on basic rules like unlawful assembly (Section 141), rioting (Section 147), and murder (Section 302), which didn't capture the group nature and heightened social aim of lynching crimes. Because there was no specific legislative reaction, there was underreporting, poor prosecution, and a lack of trust in the legal system by the public.

To fill with these deficiencies, the Indian government created the Bharatiya Nyaya Sanhita (BNS) in 2023 to replace the colonial IPC and give the law a more modern and relevant foundation. Section 103(2) of the BNS, which deals with murder committed by five or more people on certain grounds, is the first time that the BNS has made mob lynching a crime. This law shows that mob lynching is a distinct and deadly menace that needs special legal consideration.

The goal of this study is to carefully look at how mob lynching is included in the BNS and what it means. The goal is to see if the new law appropriately deals with the legal and social issues surrounding the crime and how it varies from past responses. The paper also looks at the bigger constitutional, evidentiary, and enforcement effects of these kinds of crimes. This article uses a doctrinal and analytical approach to look at how well BNS has dealt with the mob lynching situation by looking at laws, case law, comparative legal viewpoints, and the social and political setting.



2. CONCEPT AND LEGAL DIMENSIONS OF MOB LYNCHING

In law and sociology, mob lynching occurs when a group of people take the law into their own hands to punish someone, they think has done something wrong without going through the judicial system. It involves punishment outside of the law, usually based on bias, false information, or a group of people being really angry, and it can lead to significant injury or death. The main parts of mob lynching are that a group of people (usually five or more) takes part, there is no legal authority or trial, and the reason for the lynching is commonly communal, caste-based, or vigilante. Mob lynching is more deadly and harder to prosecute because it involves groupthink and a sense of impunity, which is not present in isolated violent crimes (Tamheed & Nomani, 2021).

It is vital to know the difference between mob lynching and other crimes that involve groups, such as rioting and illegal assembly. Section 141 of the Indian Penal Code (IPC) defines an unlawful assembly as a group of five or more people with a common goal, which could be committing a crime. Section 146 defines rioting as the use of force or violence by an unlawful assembly. Mob lynching, on the other hand, goes even further. It is a planned, focused attack on a person or group, frequently fuelled by hate, prejudice, or public panic, and it usually ends in serious harm or death. So, even if all lynchings may involve rioting or illegal gatherings, not all riots or illegal gatherings are mob lynchings. The law makes a difference based on the outcome, the fact that the violence was aimed at a specific group, and the mob's illegal reasons for doing so.

From a constitutional point of view, mob lynching is a direct attack on the Indian Constitution's essential ideals. It is against Article 14 (the right to be treated equally under the law), Article 21 (the right to life and personal freedom), and the idea of due process. When a mob takes on the roles of judge, jury, and executioner, it not only undermines the criminal justice system, but it also keeps a culture of fear and lawlessness going. It puts the rights of religious minorities, Dalits, and tribal communities at risk, which makes the promise of equal protection of the law even weaker (Jadon, 2024).

The courts are aware of the growing danger of mob violence. The Supreme Court of India made it very clear that mob lynching is "a crime no less than an act of terror" in the landmark case **Tehseen S. Poonawalla v. Union of India** (2018). The Court gave clear instructions for



preventive, remedial, and punitive actions, such as quick trials, compensation for victims, and holding public authorities accountable. Even when the courts stepped in, the lack of a specific punishment clause made it hard to prosecute effectively. This called for changes to the law, which the BNS has now partly addressed.

The social and political reasons for mob lynching in India can't be disregarded. Hate campaigns, spreading rumours, and dividing communities can lead to lynchings, and social media often makes these things worse. Political silence or complicity, delayed police response, and society's acceptance of violence against minorities can make these kinds of crimes easier to commit. Not only does vigilante justice undermine people's rights, it also makes people less likely to trust the system.

3. STATUTORY PROVISIONS UNDER THE BHARATIYA NYAYA SANHITA (BNS)

The Bharatiya Nyaya Sanhita (BNS) of 2023 is a big step forward in the law because it clearly talks about the crime of mob lynching (Stage, 2024). Section 103(2) is a step forward for Indian criminal law because it recognises murder based on group identity as a separate type of crime. This part makes it a crime for a gang of five or more people to kill someone because of their race, caste, community, sex, place of birth, language, or personal belief. The punishment for each member of the group is the same, and it can be death or life in prison plus a fine.

The BNS plugs a long-standing gap in the law by specifically making group-led hate crimes illegal. It recognises that lynching is worse than other types of violence because it generally involves planned violence, showing off power in public, and using the strength of a group to dominate and suppress people from weak communities. The provision changes the story from individual acts of violence to seeing lynching as a group attack on constitutional ideals.

- **Comparison with the Indian Penal Code (IPC) framework**

The Indian Penal Code of 1860 used generic rules to punish mob lynching, such as Section 302 (murder), Section 147 (rioting), Section 149 (unlawful assembly with common goal), and Section 34 (common intention). These parts allowed for group culpability, but they didn't take into account the fact that lynching is usually a hate-driven act of violence that has a big effect on people's lives and minds (Meenakshi, 2022).



Section 103(2) of the BNS, on the other hand, talks about the key differences between mob lynching and regular murder or rioting. The requirement includes both numerical and motivational elements, such as requiring at least five people to act together and proving that the conduct was done for certain discriminatory reasons. This clarity not only makes it easier to prosecute specific people, but it also sends a clear message that these kinds of crimes are not acceptable in society (Makkar & Kaur, 2024).

- **Classification of the offence: cognizable, non-bailable, and non-compoundable**

Under Section 103(2), mob lynching is a cognisable and non-bailable crime. This means that the police can file a case and arrest the suspect without getting permission from a judge beforehand. Bail is not a right, but a judge can decide whether or not to grant it. Also, the offence is non-compoundable, which means that the parties can't work things out on their own without going through the courts.

This classification fits with how serious the crime is, defining lynching as more than just a private quarrel but as a crime against public order, social peace, and constitutional morality. It strengthens the view that mob lynching is a crime of intimidation and control that is often based on bias and should be punished with a strong legal deterrence (Mathew, 2024).

- **Punishment, aggravating circumstances, and procedural reforms**

Section 103(2) says that people who are found guilty of mob lynching will face harsh punishment, such as the death penalty or life in prison. This harsh sentence system is necessary since lynching is a very serious crime that goes against the rule of law and is meant to scare people in communities. Adding aggravating circumstances, such the mob's motive, premeditation, or targeting vulnerable populations, may affect the sentence and show how serious the crime was.

The Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, deals with some of the procedural issues related to mob lynching, while the BNS sets out the substantive law. These include rules for registering e-FIRs, requiring video recording of crime scenes, using digital evidence like mobile phone footage and social media posts, and keeping witnesses safe in circumstances of group violence. These kinds of changes are necessary to deal with the real problems that come

up in mob lynching cases, when evidence is often tampered with or hidden and victims or witnesses are threatened (Pal & Singh, 2025).

Table 1: Comparison of IPC and BNS in Addressing Mob Lynching

Aspect	Indian Penal Code (IPC, 1860)	Bharatiya Nyaya Sanhita (BNS, 2023)
Specific provision on mob lynching	No distinct provision; prosecuted under general sections (302, 147, 149)	Section 103(2) explicitly criminalizes mob lynching
Definition of group crime	Unlawful assembly (Sec 141), Rioting (Sec 146), Common object (Sec 149)	Defines mob lynching as murder by 5 or more persons on discriminatory grounds
Motive or intent requirement	Focus on criminal act and common object	Requires specific bias motive (e.g., caste, religion, sex, belief)
Punishment	Life imprisonment or death (Sec 302 for murder); lower for rioting	Death or life imprisonment and fine under Section 103(2)
Classification of offence	Cognizable, non-bailable (in case of murder)	Cognizable, non-bailable, and non-compoundable
Aggravating circumstances considered	Not explicitly codified	Bias-motivated and group-based actions treated as aggravating
Procedural clarity	Relies on generic procedures of CrPC	Complemented by BNSS provisions (e.g., e-FIR, digital evidence, video trials)
Judicial and policy recognition	Addressed via Supreme Court guidelines (Tehseen S. Poonawalla case)	Statutorily recognized in the text of criminal law



- **Related BNS Provisions: Section 117(4)**

The Bharatiya Nyaya Sanhita (BNS) of 2023 adds various new rules that apply to incidents of group violence, like mob lynching. Section 103(2) gives a clear legal description and punishment for mob lynching. However, other sections, such as Section 117(4), help with classification, prosecution, and making sure that others who weren't physically involved are also held responsible. Their inclusion makes the framework stronger for dealing with not only the act of lynching but also the people and things that are involved in it.

Section 117(4) Instigation or Provocation to Commit a Crime

Section 117 of the BNS makes it a felony to help someone commit a crime, including provocation, conspiracy, and intentional assistance. Subsection (4) adds an important aspect by making the person who instigates a significant group offense, such as mob lynching, more responsible.

This part is important because it makes people who plan or advocate lynching indirectly responsible. If someone encourages five or more people to commit a crime and that encouragement leads to serious harm or death, the instigator will be punished the same way as the people who actually did it. This might mean life in prison or death, depending on how bad the deed that follows is.

This rule is especially useful for going after politicians, community leaders, or social media users who spread false tales, foment public hostility, or post inflammatory content. Section 117(4) makes sure that these non-physical actors can't get away with not being there. This broadens the reach of the criminal justice system and makes everyone in the chain of violence more responsible.

4. ENFORCEMENT CHALLENGES AND COMPARATIVE ANALYSIS

Section 103(2) of the Bharatiya Nyaya Sanhita (BNS) now officially recognises mob lynching as a serious crime, although it is still very hard to implement (Naik, 2024). These problems come from both the lack of law enforcement resources and social and political issues, such as state authorities not wanting to help and not having enough forensic and prosecution support.

Challenges in investigation and prosecution

One of the biggest problems in enforcing anti-lynching laws is figuring out who is who in a big, frequently chaotic group. Most of the time, lynching involves a group of individuals acting together in public places, which makes it hard to find the persons who are responsible for violent or deadly activities (Kumar, 2024). Even when there is video evidence, facial recognition and the street-specific attribution are typically missing.

It is also hard for prosecutors to gather and present evidence that can be used in court. Many lynchings are recorded on smartphones or seen by people nearby, but turning that content into digital evidence that can be used in court under the Bharatiya Sakshya Adhiniyam requires a clear chain of custody, proper certification, and authentication. All of these things need trained staff and the right technology (Hanspal, 2024).

Also, proving that someone had a discriminating motive, as is required by Section 103(2), is not easy. In lynching cases, evidence from social media, behaviour, or the circumstances of the crime is sometimes used to show hate or bias intent. This is different from regular murder trials.

Table 4.1: Key investigative challenges in mob lynching cases

Investigation challenge	Description
Group identification	Difficulty in naming individual participants in large-scale violence
Lack of reliable witnesses	Witnesses are afraid or unwilling to testify due to fear of reprisal
Tampering with video evidence	Digital content is often deleted, altered, or shared without metadata
Absence of forensic capacity	Many regions lack certified cyber-forensic labs or digital specialists
Proof of bias motive	Hard to establish without hate speech records or public declarations

Role of police and political interference

The police sometimes have a big say in how lynching cases go, but they are also regularly accused of slowing down investigations or misrepresenting mob actions. In a lot of documented incidents, police personnel haven't filed cases in the right sections, lessened the charges, or declined to name people who are tied to politics (Vasudeva-Barkdull, 2025).

Political influence makes the enforcement situation much more difficult. In areas where people are sensitive to caste or community issues, mob lynching happens a lot. State officials are sometimes afraid to interfere because they don't want to hurt local feelings or political supporters. This means that the accused either get away with it or the investigations move too slowly, making it less likely that they will be found guilty (Soni & Singh, 2024).

Families are even less likely to seek justice when there is no independent oversight or assistance for victims. Witness protection is still not good enough, and not many cases end in a quick trial or penalty. This makes people lose faith in the rule of law.

International models and best practices

Mob lynching is a big problem in India, but other countries have also seen hate-based group violence like this and made laws to deal with it (Rathour, 2024). Looking at models from other countries can help India improve its legal system.

Table 2: International approaches to mob lynching and hate crimes

Country	Law or policy	Key features
United States	Emmett Till Antilynching Act (2022)	Classifies lynching as a federal hate crime; mandates data tracking
South Africa	Hate Crimes and Hate Speech Bill (2018 draft)	Proposes separate punishment for bias-motivated group crimes
Bangladesh	Penal Code amendments and public order enforcement	Emphasizes mob responsibility and stricter police accountability
Kenya	Prevention of Organized Crimes Act (2010)	Allows enhanced surveillance and intelligence-sharing for mob violence



These legal frameworks all have a few things in common: they see mob violence as a more serious crime, give harsher sentences, and stress the importance of state institutions in stopping hate crimes. For example, the US sees lynching as a symbolic and historical crime tied to racial injustice, which is why it is protected under civil rights.

Lessons for India from global legal frameworks

India can learn a lot from the several models:

1. The necessity for specific anti-lynching laws that make the process clear, set deadlines for investigations, and protect victims.
2. Setting up a centralised system for reporting and keeping track of hate crimes and mob attacks, based on the U.S. system.
3. Putting money into the infrastructure for forensic and digital evidence, as well as training for police and public prosecutors.
4. Setting up fast-track courts for hate crimes that happen in groups to make sure justice is done quickly.
5. Programs to get people involved in their communities and teach them about the law to stop vigilante violence from becoming normal.

Section 103(2) of the BNS is an important legal step, but its effects will rely on how the state sets up institutions to help prevent crime, ensure fair prosecution, and make sure everyone has equal access to justice. Without a plan that includes legal, administrative, and social aspects, the law could stay just a symbol instead of making real changes (Nellist, 2024).

6. CONCLUSION AND RECOMMENDATIONS

The addition of Section 103(2) to the Bharatiya Nyaya Sanhita (BNS) in 2023 is a major step forward in India's efforts to stop mob lynching. The Indian Penal Code (IPC) didn't specifically include group-based hate crimes, but the BNS does. It sees lynching as a separate and more serious crime, especially whether it is based on caste, religion, sex, language, or place of birth. This change shows that the judicial system is becoming more cognisant of the need to deal with group violence in a more focused and effective way. Even if things are getting better, there are still a lot of problems with enforcement on the ground. Some of these problems are that it's hard to investigate and identify people in a mob, there isn't enough technology and forensic infrastructure, politics get in the way, and there isn't consistent legal and institutional assistance



for victims and witnesses. Because of this, convictions are still rare, and people don't trust the legal system as much as they used to. Also, the law won't work as well if it doesn't have trained staff, efficient procedures, and judicial monitoring.

The following policy suggestions are very important to make the new rule work better and make sure that justice is served in incidents of mob lynching:

- **Dedicated anti-lynching law:** Section 103(2) is a good start, but a full anti-lynching law should clearly define lynching, provide procedural safeguards, set timetables for investigations, and make sure victims get paid.
- **Police accountability mechanisms:** To make sure that investigations are fair and unbiased, specialised units and accountability frameworks should be set up. Officers who put off or change cases should be punished by the law.
- **Fast-track courts and digital forensics:** Because lynching cases are so emotionally and socially charged, they need to be handled in special fast-track courts. It's also important to put money into forensic labs, CCTV systems, and training on how to use digital evidence.
- **Awareness and community involvement:** Public education campaigns should talk about the risks of hate speech, false information, and mob behaviour. Civil society and schools must work together to promote constitutional ideals.
- **Regular judicial review and legal updates:** Because mob violence is always changing, especially with the rise of social media, BNS laws need to be reviewed and changed on a regular basis to make sure they are still useful and relevant.

BNS has made a good move towards stopping mob lynching, but legal recognition is not enough on its own. To keep the constitutional promise of life, dignity, and equal protection under the law for all citizens, we need to take a holistic strategy that includes changing the law, building up institutions, raising public awareness, and getting politicians to want to do the right thing.



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