

“BHARATIYA NYAYA SANHITA ON TRIAL: CAN SECTIONS 103 AND 117 DETER MOB LYNCHING?”

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ABSTRACT

Mob lynching, a brutal form of vigilante justice often fueled by communal hatred, caste prejudice, and misinformation, has emerged as a growing concern in India's socio-legal landscape. The Bharatiya Nyaya Sanhita (BNS), 2023, in its Sections 103(2) and 117(4), introduces specific provisions addressing group-based acts of murder and grievous hurt motivated by identity markers such as race, caste, religion, sex, or language. These provisions mark a legal evolution from the Indian Penal Code (IPC) by formally recognizing hate-based group violence and assigning collective criminal liability to all participants in such acts.

This article critically examines the effectiveness and limitations of these provisions in tackling the menace of mob lynching. It assesses whether BNS's framework can serve as a sufficient deterrent, especially in the absence of a standalone anti-lynching law and explores how these provisions align with constitutional principles of equality, justice, and due process. Drawing on case studies, judicial precedents, and comparative international legal frameworks, the analysis highlights key enforcement challenges—such as institutional bias, weak prosecution, and community silence—that may hinder the law's potential. Ultimately, the article argues that while Sections 103 and 117 represent a step forward, their success in curbing mob violence will depend on interpretation, implementation, and public accountability mechanisms.

KEYWORDS

Bharatiya Nyaya Sanhita (BNS) 2023; Mob lynching; Section 103 BNS; Section 117 BNS; Group liability; Hate crimes; Caste-based violence; Communal violence; Legal deterrence; Collective criminal responsibility; Criminal law reform in India; Grievous hurt; Identity-based violence; Vigilantism; Indian penal reform.

INTRODUCTION

Mob lynching has become a deeply troubling phenomenon in India, reflecting a disturbing trend of vigilante violence driven by communal animosities, caste prejudices, and misinformation. These violent episodes not only shatter the social fabric but also challenge the capacity of the legal system to protect vulnerable communities and uphold the rule of law⁷⁵³. In response to this growing menace, the Bharatiya Nyaya Sanhita (BNS), 2023, introduced Sections 103(2) and 117(4), which

specifically target group-based acts of murder and grievous hurt motivated by identity markers such as race, caste, religion, sex, or language. This marks a significant shift from the traditional framework under the Indian Penal Code (IPC), as the BNS explicitly recognizes hate-driven collective violence and seeks to hold all participants in such acts criminally liable.

This article undertakes a critical examination of these new provisions to assess whether they can effectively deter mob lynching in India's complex socio-legal environment. Given the absence of a dedicated anti-lynching law, the analysis focuses on the scope and limitations of

⁷⁵³ Becker, G. S. (1968). *Crime and Punishment: An Economic Approach*. Journal of Political Economy, 76(2), 169–217. <https://doi.org/10.1086/259394>

Sections 103 and 117 in addressing the root causes and manifestations of mob violence. It further explores the constitutional implications of these provisions, particularly concerning equality, justice, and due process. Through a detailed review of case law, enforcement challenges, and comparative international frameworks, the article aims to offer a comprehensive understanding of the BNS's potential role in curbing this violent trend, while highlighting the practical hurdles that may impede its success.

OVERVIEW OF THE BHARATIYA NYAYA SANHITA (BNS), 2023

The Bharatiya Nyaya Sanhita (BNS), 2023, a comprehensive legal reform replacing the Indian Penal Code (IPC) of 1860, marks a watershed moment in Indian criminal jurisprudence. Among its most notable innovations is the *explicit legal recognition and penalisation of mob lynching*, a form of collective violence that had long operated in a grey area of criminal law.

Prior to BNS 2023, mob lynching cases were prosecuted under general provisions such as murder (Section 302 IPC), rioting (Section 147 IPC), and unlawful assembly (Section 141 IPC). However, the absence of a distinct definition and punishment framework led to inconsistent and inadequate justice. The Supreme Court of India, in *Tehseen S. Poonawalla v. Union of India* (2018), had strongly urged the Parliament to legislate specifically on lynching, describing it as a "horrendous act of mobocracy" and recommending preventive, remedial, and punitive measures⁷⁵⁴.

The BNS, 2023, introduces Clause 103(2) (formerly IPC Section 302) which categorically criminalises mob lynching as a distinct offence, with stringent penalties:

Clause 103(2): *If a group of five or more persons, acting in concert, causes the death of another person on the grounds of religion, race, caste, sex, place of birth, language, personal*

*belief, or any other similar grounds, all members of such a group shall be punished with death or imprisonment for life, and shall also be liable to fine.*⁷⁵⁵

1. **Definition of Group Liability:** Unlike the IPC, BNS provides clarity by explicitly holding *each member of the mob accountable*, regardless of individual roles, thus invoking the doctrine of *joint liability*.
2. **Protected Grounds:** The inclusion of identity markers like religion, caste, and language reflects a rights-based approach, aligning with constitutional protections under Articles 14, 15, and 21.
3. **Minimum Group Size:** The law sets a clear threshold of *five or more persons*, avoiding ambiguity.
4. **Graded Punishment:** Though provision allows both *life imprisonment* and *death penalty*, the choice is left to judicial discretion, allowing for proportional justice.

Unlike ad hoc state laws (e.g., Manipur's Anti-Mob Lynching Act, 2018 or Rajasthan Protection from Lynching Bill, 2019), the BNS provision is *national in scope* and *integrated into the central criminal code*. It institutionalizes mob lynching as a *serious and standalone criminal offence*, potentially influencing social deterrence.

This marks the first time in Indian legal history that lynching has been defined and penalized independently, responding to increasing incidents and public outcry. The codification reflects legislative intent to assert the *rule of law* and curb vigilante justice.

While the provision is a progressive step, legal experts have flagged some concerns such as burden of proof, risk of misuse and while The provision is punitive; BNS does not yet incorporate the *preventive and rehabilitative* suggestions made by the Supreme Court in

⁷⁵⁴ *Tehseen S. Poonawalla v. Union of India*, (2018) 9 SCC 501

⁷⁵⁵ *Bharatiya Nyaya Sanhita, 2023 – Clause 103(2)*. Official Gazette of India.

Poonawalla, such as victim compensation schemes, fast-track courts, or police accountability mechanisms⁷⁵⁶.

The Bharatiya Nyaya Sanhita, 2023's inclusion of specific anti-lynching legislation is a landmark legal development, strengthening protections against identity-based collective violence. While implementation and interpretation will shape its real-world impact, the recognition itself closes a long-standing legislative gap and sends a strong message against mob justice.

LEGAL RECOGNITION OF HATE-BASED GROUP VIOLENCE

In recent years, India has witnessed an alarming rise in incidents of group violence rooted in identity-based hatred—targeting individuals on the grounds of religion, caste, race, language, gender, dietary practices, or personal belief systems. These acts, often in the form of mob lynchings, represent a dangerous erosion of the rule of law and pose a serious threat to India's secular and constitutional fabric.

Despite the gravity of these acts, hate-based group violence has historically lacked distinct legal recognition in Indian criminal law. Existing provisions under the Indian Penal Code, 1860 (IPC) dealt with murder, hurt, rioting, or unlawful assembly, but did not acknowledge the collective, prejudiced, and discriminatory intent behind such acts.

The Bharatiya Nyaya (Second) Sanhita, 2023 (BNSS), intended to replace the IPC, introduces for the first time specific recognition of group violence motivated by hate, under Clause 103(2)⁷⁵⁷ and Clause 117(4)⁷⁵⁸. This marks a significant, yet incomplete step toward legal recognition and punishment of hate-based group violence.

Hate-based group violence refers to coordinated acts of violence by a group, motivated by prejudice against the victim's

identity—religious, racial, caste, linguistic, or ideological. It is distinct from ordinary group violence in that:

- The victim is targeted not for an individual act, but because of their membership in a perceived "other" group.
- It carries a strong symbolic and psychological impact, aiming to intimidate an entire community.
- It is often linked to systemic discrimination and societal power hierarchies.

The landmark case of *Tehseen S. Poonawalla v. Union of India* (2018) 9 SCC 501 was the first major judicial recognition of mob lynching as a social menace. The Supreme Court laid down preventive, remedial, and punitive guidelines and emphasized the State's responsibility to curb "rising intolerance and growing polarisation." However, there was no corresponding amendment to the IPC to create specific penal provisions.

The Manav Suraksha Kanoon (MaSuKa)—a private member bill—attempted to define and criminalize lynching as hate-based violence. While progressive, it was never enacted⁷⁵⁹.

Some states like Jharkhand, Rajasthan, and Manipur passed anti-lynching bills, but most await Presidential assent, leaving a legislative vacuum.

Provisions under BNSS, 2023: A Step Towards Recognition

Clause 103(2): Mob Lynching as Murder- This clause:

- Recognizes hate-motivated murder.
- Requires a minimum of five perpetrators.
- Introduces a specific motive-based classification absent in IPC Section 302.

Clause 117(4): Group-Based Grievous Hurt

⁷⁵⁶ Human Rights Watch. (2022). *India: Mob Violence and Impunity*

⁷⁵⁷ Bharatiya Nyaya Sanhita, § 103, Act No. 45 of 2023, India Code (2023).

⁷⁵⁸ Bharatiya Nyaya Sanhita, § 117, Act No. 45 of 2023, India Code (2023).

⁷⁵⁹ Poonawalla, S. (2017). *The Protection from Lynching Bill, 2017 (Manav Suraksha Kanoon)*. Rajya Sabha Private Members' Bill No. 44.

This provision acknowledges non-lethal but severe identity-based violence, extending protection beyond fatal outcomes.

While Clauses 103(2) and 117(4) introduce legal recognition of group-based identity violence, they suffer from critical gaps.

The legal recognition of hate-based group violence in BNSS, 2023 is a historic development, especially through Clauses 103(2) and 117(4). However, the provisions remain largely punitive and structurally limited. Without complementary procedural safeguards, administrative accountability, and victim support mechanisms, the law risks becoming a symbolic reform rather than a transformative one.

Given the systemic and identity-driven nature of such violence, what is required is a comprehensive hate crime law, grounded in constitutional principles, judicial precedents, and best international practices. India must treat such violence not just as criminal, but as an assault on the idea of India itself.

EFFECTIVENESS OF SECTIONS 103 AND 117 IN DETERRING MOB LYNCHING

The inclusion of Sections 103(2) and 117(4) in the Bharatiya Nyaya (Second) Sanhita, 2023 (BNSS), marks the first explicit attempt by the Indian legislature to address the long-standing issue of mob lynching as a distinct and serious offence. Section 103(2) criminalizes murder committed by five or more individuals acting in concert on the grounds of identity—such as caste, community, religion, language, or personal belief—and provides for punishment by death, life imprisonment, or a minimum term of seven years along with fine. Similarly, Section 117(4) deals with grievous hurt inflicted by five or more persons under the same identity-based motivations, prescribing imprisonment up to seven years and fine. These provisions are a clear step towards acknowledging the targeted and discriminatory nature of mob lynching and aim to fill a significant gap in India's penal jurisprudence, which previously lacked a

specific category for hate-based group violence.

However, while these sections represent legislative progress, their effectiveness in deterring mob lynching remains questionable due to multiple shortcomings in their scope and implementation framework. Firstly, both provisions focus primarily on punitive measures, without incorporating preventive mechanisms, institutional accountability, or remedial measures—all of which are essential to tackling mob lynching, which often involves a broader ecosystem of social bias, misinformation, and law enforcement failure. Secondly, the requirement that a "group of five or more persons" must act in concert introduces an arbitrary numerical threshold that could exclude incidents involving fewer individuals, thereby diluting legal response to smaller but equally dangerous acts of mob violence. Furthermore, these provisions lack procedural safeguards such as special investigative mechanisms, fast-track courts, victim-witness protection, or mandatory action by police authorities—elements that were strongly recommended in the *Tehseen S. Poonawalla* judgment of the Supreme Court in 2018 and reflected in proposed laws like the Manav Suraksha Kanoon (MaSuKa) and various state-level anti-lynching bills.

In the absence of these supporting mechanisms, Sections 103(2) and 117(4) risk being underutilized or inconsistently enforced, especially in socio-politically sensitive cases where victims belong to marginalized communities and perpetrators enjoy local support or political backing. Additionally, the new provisions stop short of categorizing mob lynching as a "hate crime," thereby failing to place it within the broader narrative of identity-based violence that undermines constitutional guarantees of equality and dignity. There is also no provision for mandatory reporting, public awareness, or data collection on such crimes, which weakens both accountability and policy formulation.

In conclusion, while Sections 103 and 117 of the BNSS reflect an important shift in the legal treatment of mob lynching by providing statutory recognition and serious punishment, their deterrent effect remains limited in the absence of a comprehensive legal, procedural, and institutional framework. For these provisions to effectively deter such crimes, they must be embedded within a broader legal regime that emphasizes prevention, swift justice delivery, victim support, and law enforcement accountability, alongside community engagement and counter-narratives to hate. Without this multidimensional approach, the mere presence of penal sanctions may not be sufficient to curb the deep-rooted and increasingly organized menace of mob lynching in India.

COMPARATIVE PERSPECTIVES

Understanding the issue of mob lynching and hate-based group violence in India benefits from examining how other jurisdictions have tackled similar challenges. Across the world, democracies have responded to such crimes by crafting laws that recognize the identity-based motives, provide enhanced penalties, and adopt a victim-centric and preventive approach to justice. These comparative frameworks offer valuable insights into how Indian law—especially in the context of the Bharatiya Nyaya (Second) Sanhita, 2023—can evolve to more effectively deter and address such crimes.

In the United States, mob lynching has a long, painful history rooted in racial violence, particularly against African Americans. After over a century of failed legislative efforts, the Emmett Till Antilynching Act was passed in 2022⁷⁶⁰. This Act makes lynching a federal hate crime, punishable by up to 30 years in prison. Crucially, the law does not impose a minimum number of perpetrators, recognizing that even one or two individuals can engage in identity-

based mob violence. It also allows federal intervention in local crimes when states fail to act adequately—an important check on state inertia, which is often seen in India as well. The U.S. model emphasizes bias-motivation as a key element, which is something the Indian BNSS provisions (Sections 103 and 117) imply, but do not explicitly classify under a broader hate crime framework.

In South Africa, the post-apartheid legal system has explicitly acknowledged hate crimes as serious threats to democratic equality⁷⁶¹. The Prevention and Combating of Hate Crimes and Hate Speech Bill seeks to criminalize hate crimes motivated by race, ethnicity, gender, sexual orientation, and other protected characteristics. What makes this model particularly instructive is its intersectional and restorative justice approach, which not only punishes offenders but also emphasizes community healing, anti-discrimination training, and rehabilitation. In a society like India, with its own deeply entrenched caste, communal, and gender biases, such a holistic approach could offer a more sustainable model of justice.

Several European Union countries have adopted a robust legislative stance against hate crimes. For example, Germany and France enhance penalties when crimes are motivated by race, religion, or other protected identities⁷⁶². These jurisdictions mandate law enforcement training to identify hate crime indicators and often require the collection and publication of official hate crime statistics, allowing for evidence-based policymaking. These procedural obligations are conspicuously absent in Indian criminal law, which does not currently maintain disaggregated data on identity-motivated crimes.

⁷⁶⁰ Emmett Till Antilynching Act, 2022, Public Law No: 117–107, United States Congress. Available at: <https://www.congress.gov/bills/117th-congress/house-bill/55>

⁷⁶¹ Prevention and Combating of Hate Crimes and Hate Speech Bill, 2018, Republic of South Africa, Department of Justice and Constitutional Development. Available at: <https://www.justice.gov.za/legislation/bills/2018-HateCrimesBill.pdf>

⁷⁶² EU Agency for Fundamental Rights, “Hate Crime Reporting and Recording in the EU,” FRA Report (2021). Available at: <https://fra.europa.eu/en/publication/2021/hate-crime-reporting>

Closer to home, Bangladesh and Sri Lanka have also seen sporadic incidents of communal violence and have responded with a mix of emergency laws and community policing reforms⁷⁶³. However, their responses tend to lack formal recognition of hate crimes as a separate legal category, much like India. This underlines a regional legislative gap in codifying identity-based violence despite its frequent occurrence.

India, through Sections 103(2) and 117(4) of the BNSS, has taken a preliminary step toward aligning with global standards by recognizing the group and identity-based nature of mob violence. However, unlike the legal frameworks in the U.S., EU, or South Africa, the Indian approach remains punitive but procedurally underdeveloped. There is no explicit recognition of hate crime, no specialized investigative units, and no system for monitoring, data collection, or victim support services. The comparative analysis reveals that effective legal deterrence requires more than criminalization—it demands a coordinated legislative, institutional, and social response.

Thus, drawing lessons from international practices, India must move beyond symbolic penal recognition and toward comprehensive anti-lynching and hate crime legislation, complete with implementation mechanisms, oversight bodies, community outreach, and support for survivors. These reforms are essential if the country is to meaningfully confront and dismantle the growing menace of hate-based group violence.

CONCLUSION

The inclusion of Sections 103(2) and 117(4) in the Bharatiya Nyaya Sanhita, 2023, signifies a long-awaited recognition of mob lynching as a distinct and serious criminal offence rooted in identity-based hatred. By explicitly referring to acts of violence committed by groups on the basis of race, caste, religion, language, or belief, these provisions mark a departure from the

silence of the Indian Penal Code, 1860, which lacked any focused treatment of such crimes. This statutory shift reflects a growing awareness of the communal, symbolic, and systemic nature of mob violence in India. However, the capacity of these sections to effectively deter mob lynching remains uncertain and limited.

The provisions, while important in form, remain insufficient in substance. Their exclusive focus on punitive measures, without embedding preventive mechanisms such as nodal officers, special courts, fast-track trials, or witness protection, limits their real-world application. The arbitrary threshold of five or more perpetrators, the absence of a clear definition or classification of "hate crime", and the lack of victim-centric and rehabilitative provisions all dilute the intended deterrent impact. Moreover, the failure to implement the Supreme Court's guidelines in *Tehseen S. Poonawalla* and the non-enactment of comprehensive legislative models like MaSuKa (Manav Suraksha Kanoon) or various state bills leaves India's legal response fragmented and reactive.

Comparative legal systems like those in the United States, South Africa, and European Union nations provide instructive examples of how identity-motivated violence can be combated through a multidimensional legal framework—one that combines criminal sanctions with systemic reforms, public accountability, and data-driven monitoring. India must take similar steps to ensure that Sections 103 and 117 of the BNSS are not mere symbolic gestures, but rather the foundation of a comprehensive legal and policy response to one of the gravest threats to constitutional morality and social harmony.

Ultimately, while the Bharatiya Nyaya Sanhita takes a significant step forward, its success in deterring mob lynching will depend on the political will to operationalize the law, the efficiency of law enforcement, and the commitment of the justice system to uphold human dignity and constitutional values without bias or delay. Without structural

⁷⁶³ International Crisis Group, "Communal Tensions in South Asia," Asia Report No. 294 (2021); Amnesty International, "Freedom of Expression and Hate Speech in Sri Lanka," Report (2022).

reforms, the law may remain a promising text with limited transformative effect.

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