
MOB LYNCHING UNDER THE BHARATIYA NYAYA SANHITA, 2023: A CRITICAL APPRAISAL OF SECTIONS 103(2) AND 117(4)

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ABSTRACT

The enactment of the Bharatiya Nyaya Sanhita, 2023 marks an important development in India's criminal-law response to specified forms of collective identity-based violence. Sections 103(2) and 117(4) introduce specialised provisions concerning group-based murder and grievous hurt where five or more persons act in concert on specified or similar identity-related grounds. This article critically examines the scope, statutory ingredients and limitations of these provisions. It analyses the significance of the five-person threshold, the expression “acting in concert”, the identity-based requirement and the relationship between individual criminal responsibility and collective violence. It further situates the BNS provisions within the constitutional framework of Articles 14 and 21 and the preventive, remedial and punitive jurisprudence developed in *Tehseen S. Poonawalla v. Union of India*¹. The article also examines relevant investigative and evidentiary mechanisms under the Bharatiya Nagarik Suraksha Sanhita, 2023 and the Bharatiya Sakshya Adhiniyam, 2023. It argues that the BNS strengthens substantive criminalisation but does not, by itself, constitute a complete anti-lynching framework. Effective implementation requires institutional capacity, evidence-sensitive investigation, victim and witness protection, preventive mechanisms and periodic evaluation of the statutory framework.

¹ *Tehseen S. Poonawalla v. Union of India*, (2018) 9 SCC 501.

1. INTRODUCTION

The rule of law rests upon the principle that adjudication of criminal wrongdoing belongs to legally constituted institutions rather than to private groups. Collective violence commonly described as mob lynching challenges that principle in a particularly direct manner because a group assumes, without lawful authority, the power to identify, condemn and punish an individual.

The problem is not confined to the physical violence of an individual incident. Collective violence can undermine public confidence in legal institutions, expose vulnerable persons to identity-based targeting and create an environment in which private force is treated as an alternative to lawful process. The constitutional implications therefore extend beyond the immediate criminal offence and engage the State's responsibilities concerning equality, life, personal liberty and effective legal protection.

For a substantial period, Indian criminal law did not contain a provision expressly framed around the specific combination of collective action and identity-based grounds that is now addressed by Sections 103(2) and 117(4) of the Bharatiya Nyaya Sanhita, 2023 (BNS).² Depending on the facts, offences arising from collective violence could be prosecuted through provisions relating to murder, grievous hurt, unlawful assembly, common object and other applicable offences.

The BNS has altered that position by expressly prescribing aggravated consequences for specified forms of group-based murder and grievous hurt.³ The legislative development is important, but it raises equally important questions. What precisely is the scope of Sections 103(2) and 117(4)? Does the five-person threshold create clarity or exclusion? What does “acting in concert” require? How is the identity-related ground to be established? And to what extent can substantive criminalisation address a phenomenon whose prevention and investigation depend upon institutional conduct?

² Press Release, Ministry of Home Affairs, Mob Lynching and Snatching Related Provisions in New Criminal Laws, Press Information Bureau, Gov't of India (Dec. 4, 2024, 4:45 PM), <https://www.pib.gov.in/PressReleasePage.aspx?PRID=2080661>.

³ Bharatiya Nyaya Sanhita, No. 45 of 2023, §§ 103(2), 117(4), (providing enhanced punishment where murder or grievous hurt is committed by a group of five or more persons acting in concert on specified identity-based grounds; § 103(2) prescribes death or imprisonment for life and fine for murder, while § 117(4) prescribes imprisonment of up to seven years and fine for grievous hurt).

This article argues that Sections 103(2) and 117(4) constitute a significant substantive development but should not be treated as a complete anti-lynching code. Their effectiveness depends upon their interaction with constitutional guarantees, the preventive and remedial framework developed in *Tehseen S. Poonawalla v. Union of India*⁴, investigation under the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), evidentiary rules under the Bharatiya Sakshya Adhiniyam, 2023 (BSA), and mechanisms for victim and witness protection.

The article adopts a doctrinal and analytical approach. It examines statutory text, constitutional principles, judicial decisions and relevant procedural and evidentiary mechanisms, while using comparative material only to identify broader institutional lessons. The objective is not to assume that a separate anti-lynching statute is necessarily required, but to identify the conditions under which the present framework can operate effectively and the circumstances in which further reform may become justified.

2. RESEARCH QUESTIONS AND METHODOLOGY

The article addresses four principal questions:

First, what are the precise statutory ingredients and legal limits of Sections 103(2) and 117(4) of the BNS?

Second, do the five-person threshold, the requirement of acting in concert and the identity-based ground create significant interpretive or evidentiary limitations?

Third, how do the BNS provisions interact with Articles 14 and 21 and the preventive, remedial and punitive framework developed by the Supreme Court in *Tehseen S. Poonawalla*⁵?

Fourth, what procedural, evidentiary and institutional reforms are necessary to make the statutory framework effective in practice?

The research is primarily doctrinal. It examines statutory provisions, constitutional principles and judicial decisions. The analysis also considers procedural and evidentiary legislation because substantive criminalisation cannot be assessed independently from investigation and proof. Comparative material is used in a limited manner to identify possible institutional

⁴ *Tehseen S. Poonawalla*, (2018) 9 SCC 501.

⁵ *Id.*

lessons rather than to advocate direct transplantation of foreign legislation.

3. FROM THE IPC FRAMEWORK TO BNS, 2023

The legal response to collective violence in India historically operated through general provisions of criminal law. Murder, grievous hurt, unlawful assembly and provisions concerning common object or constructive liability could be applied according to the facts.⁶ The absence of a provision specifically framed around the combination of group action and identity-related grounds nevertheless generated a question about whether the distinctive character of such violence was adequately recognised.

The BNS introduces a more specific response. Section 103(2) addresses murder committed by *a group of five or more persons acting in concert* on specified identity-related grounds. Section 117(4) addresses grievous hurt caused by a group satisfying corresponding requirements.

The significance of these provisions must be assessed precisely. They do not provide an exhaustive statutory definition of every incident that may be described socially as mob lynching. Instead, they prescribe particular consequences where the statutory ingredients are established.

This distinction is important for both prosecution and scholarship. A broad social label cannot substitute for proof of statutory elements. *An incident may be described as mob violence while falling outside the specialised provisions because the numerical threshold, concerted action, qualifying ground or required consequence is not established.*

The transition from the IPC to the BNS should therefore be viewed as an opportunity to examine both legislative recognition and implementation. The central question is not merely whether the law contains a new provision, but whether the provision can be translated into reliable investigation, fair adjudication and meaningful protection.

4. SECTION 103(2): GROUP-BASED MURDER

Section 103(2) is the principal provision examined in this article. It applies where *five or more*

⁶ S. James Raja, *An Incomplete Legislative Response to Mob Violence: Restricting Criminalization to Cases Resulting in Death and Negating the Requirement of Mens Rea*, Section1.in (May 31, 2026), <https://section1.in/an-incomplete-legislative-response-to-mob-violence-restricting-criminalization-to-cases-resulting-in-death-and-negating-the-requirement-of-mens-rea/>.

persons, acting in concert, commit murder on the ground of race, caste or community, sex, place of birth, language, personal belief or any other similar ground.

The provision contains several distinct ingredients: the commission of murder; participation by a group of at least five persons; concerted action; and the specified identity-related ground. Each ingredient matters independently.

The numerical requirement provides a relatively clear threshold. It can prevent the specialised provision from becoming an amorphous label applicable to every group-related homicide. At the same time, it necessarily excludes collective violence involving fewer than five participants from the specific provision, even if the underlying conduct may possess similar social characteristics.

The phrase “*acting in concert*” is equally significant. Collective criminality cannot be allowed to become guilt by association. The prosecution must establish the connection between the accused and the concerted conduct required by the statutory provision. Mere presence in a crowd should not automatically be equated with participation in the offence.⁷

The identity-related ground introduces a further evidentiary question. The identity of the victim is not, by itself, conclusive proof that the offence was committed on that ground. The prosecution must establish the legally relevant connection between the ground and the commission of the offence.

The provision's aggravated punishment reflects legislative recognition of the seriousness of qualifying collective violence. Yet severity of punishment does not resolve questions of proof, investigation or prevention. The effectiveness of Section 103(2) must therefore be measured through its operation in the complete criminal-justice process.

5. SECTION 117(4): GROUP-BASED GRIEVOUS HURT

Section 117(4) complements Section 103(2) by addressing qualifying cases of grievous hurt. Its importance lies in recognising that collective identity-based violence need not culminate in death to constitute a serious criminal-justice concern.

⁷ *Zainul v. State of Bihar*, 2025 SCC OnLine SC 2152, ¶ 54 (S.C. Oct. 7, 2025).

The provision retains the essential structural requirements: five or more persons, acting in concert, causing grievous hurt on specified or similar identity-related grounds. Consequently, the same questions concerning numerical threshold, collective participation and proof of the relevant ground arise here as under Section 103(2).

The provision also prevents the analytical framework from becoming death-centred. A legal response that recognises only fatal incidents may fail to account for serious collective violence that causes permanent or substantial injury but does not result in death.

At the same time, the specialised character of Section 117(4) should not be overstated. It does not create a general offence covering every instance of group assault. The statutory ingredients must still be established.

Sections 103(2) and 117(4) are therefore complementary. One addresses qualifying group-based murder and the other qualifying group-based grievous hurt. Their common structural elements make them suitable for a joint critical analysis, while their different consequences require separate attention.

6. THE FIVE-PERSON THRESHOLD AND “ACTING IN CONCERT”

The five-person threshold is one of the most important features of the specialised provisions. It offers an objective criterion and can contribute to legal certainty. However, it also creates a boundary that may exclude smaller groups whose conduct may nevertheless resemble the broader phenomenon of lynching.

The appropriate scholarly position is not to label the threshold automatically arbitrary. The better question is whether the distinction is rationally connected with the legislative objective and whether practical experience reveals significant forms of collective violence that fall outside the specialised provisions.

The requirement of acting in concert is similarly important. It recognises collective conduct while preserving the principle of individual criminal responsibility. Investigators must reconstruct the event in a manner capable of distinguishing mere presence from participation.⁸

⁸ *Id.* ¶¶ 54-61.

Evidence may include eyewitness accounts, video recordings, communications, conduct before or during the incident and other circumstances, depending upon the facts. None of these categories should be treated as automatically conclusive.

The legal challenge is therefore dual: the law must be sufficiently strong to address organised collective violence, while remaining sufficiently precise to prevent conviction through association alone. The interpretation of “acting in concert” should accordingly preserve both collective accountability and individualised proof.

7. IDENTITY-BASED GROUNDS AND THE PROBLEM OF PROOF

The identity-based element distinguishes Sections 103(2) and 117(4) from ordinary provisions dealing with homicide or grievous hurt. The statutory grounds include race, caste or community, sex, place of birth, language, personal belief and a similar ground. *Religion as a ground is notably excluded*, though the “personal belief”⁹ clause and the “similar ground”¹⁰ clause can be used if the victim was identified and assaulted based on his religion or religious beliefs.

The inclusion of a similar-ground clause provides flexibility, but it should not be treated as an unlimited residual category. The additional ground should remain connected with the character of the expressly enumerated identity-related grounds.

The evidentiary question is particularly important. An offender's prejudice and the statutory ground of the offence are related concepts but should not be collapsed into one another. The fact that a victim belongs to a particular community, caste, linguistic group or other identity category cannot automatically establish that the offence was committed on that ground.

The prosecution may rely upon direct or circumstantial evidence, including statements, communications, conduct and surrounding circumstances, subject to the rules of evidence. The court must ultimately determine whether the statutory requirement has been established.

This approach protects both sides of the criminal process. It allows the law to recognise discriminatory collective violence without weakening the requirement that guilt be proved

⁹ *S.R. Bommai v. Union of India*, (1994) 3 SCC 1, ¶ 182.

¹⁰ Project 39A, *Criminal Law Bills 2023 Decoded #3: Examining Anomalies in the Provisions for Mob Lynching Under BNS 2023*, P39A Criminal Law Blog (Sept. 18, 2023), <https://p39ablog.com/2023/09/criminal-law-bills-2023-decoded-3-examining-anomalies-in-the-provisions-for-mob-lynching-under-bns-2023/>.

according to law.

8. THE CONSTITUTIONAL FRAMEWORK: ARTICLES 14 AND 21

The BNS provisions operate within the constitutional framework governing equality, life and personal liberty. Article 14 guarantees equality before law and equal protection of the laws. Article 21 protects life and personal liberty.

Article 14 is relevant to the implementation of anti-lynching provisions because formal criminalisation is insufficient if comparable instances receive materially different institutional responses without a legally relevant justification. The constitutional concern is not that every difference in outcome is discriminatory; criminal cases necessarily differ in evidence and circumstances. The concern is arbitrary or impermissibly discriminatory enforcement.

Article 21 adds a strong protective dimension. Collective violence directly threatens life and personal liberty. The State's constitutional responsibility therefore includes effective legal protection and, where circumstances justify it, lawful preventive action.

The constitutional framework also protects the rights of accused persons. Effective prevention and prosecution cannot become a justification for guilt by association or departure from fair procedure.

The appropriate constitutional approach is consequently two-directional: the State must protect persons against collective violence while ensuring that its own criminal-justice response remains lawful, proportionate and evidence-based.

9. TEHSEEN S. POONAWALLA AND THE CONTINUING JUDICIAL FRAMEWORK

The Supreme Court's decision in *Tehseen S. Poonawalla v. Union of India*¹¹ provides an important judicial framework for understanding the wider response to mob violence and lynching. The Court addressed preventive, remedial and punitive dimensions rather than limiting its concern to post-occurrence punishment.

The preventive dimension is significant because criminal punishment occurs after harm. Where

¹¹ *Tehseen S. Poonawalla*, (2018) 9 SCC 501.

credible circumstances indicate a risk of collective violence, lawful preventive mechanisms can reduce the likelihood of irreversible injury. The remedial dimension recognises the consequences suffered by victims and their families. The punitive dimension concerns accountability where criminal conduct and institutional failures are established.

The BNS does not replace this framework. Sections 103(2) and 117(4) principally perform a substantive penal function. *Tehseen*¹² addresses the wider institutional ecosystem in which collective violence must be prevented, investigated and remedied.

This relationship is complementary. Criminalisation cannot prevent every incident by itself, while prevention cannot substitute for prosecution after an offence. An effective framework must therefore operate before and after violence.

The continuing relevance of *Tehseen*¹³ also illustrates why a purely statutory assessment of the BNS would be incomplete. The post-BNS framework should be understood as an interaction between substantive criminal law, constitutional obligations, judicial directions and institutional practice.

10. IMPORTANCE OF INVESTIGATION

The effectiveness of Sections 103(2) and 117(4) depends heavily on investigation. Collective incidents create a distinctive evidentiary problem because the event is collective while criminal liability remains individual.

Section 173 of the BNSS governs information relating to cognizable offences, while Sections 175 and 176 provide the broader framework for investigation. Section 176(3) contains a forensic and crime-scene documentation requirement for offences punishable with imprisonment of seven years or more, subject to the statutory conditions.

For collective-violence cases, forensic documentation may assist reconstruction of the incident. Physical traces, objects, recordings and other material may become relevant. The statutory requirement, however, cannot itself guarantee effective forensic investigation. Availability of trained personnel, equipment, laboratories and investigators remains essential.

¹² *Id.*

¹³ *Id.*

Investigators must also identify individual participation. Video material, eyewitness accounts, communications and other evidence may assist, but their probative value depends upon authenticity, context and legal admissibility.

The implementation gap therefore has two dimensions: the adequacy of the statutory mechanism and the institutional capacity to operate it. This gap is important to note rather than treating statutory enactment as synonymous with practical effectiveness.

11. IMPORTANCE OF ELECTRONIC AND DIGITAL EVIDENCE

Contemporary collective violence may generate substantial digital evidence through mobile devices, surveillance systems, social-media platforms and other electronic sources. The BSA recognises electronic and digital records within the evidentiary framework and provides provisions concerning their proof.¹⁴

Digital evidence may assist in establishing chronology, identifying participants, reconstructing communications and examining circumstances preceding or accompanying an incident. It may also become relevant to the identity-related element where communications or other material indicate discriminatory motivation.

However, digital material is not inherently conclusive. Authenticity, integrity, attribution, relevance and statutory admissibility remain essential. A message, recording or post must be assessed in context rather than treated as self-proving.¹⁵

Digital evidence can also be relevant to the “acting in concert” requirement. Communications may assist in establishing connections between participants, but communication alone does not automatically establish concerted criminal action.

The BSA therefore provides an important evidentiary infrastructure, but its practical value depends upon lawful collection, preservation, authentication and judicial evaluation of those

¹⁴ Bharatiya Sakshya Adhiniyam, No. 47 of 2023, §§ 2(1)(d), 61–63 (defining “document” to include electronic and digital records, according electronic records the same legal effect as other documents, and prescribing the conditions governing their admissibility and proof).

¹⁵ Bharatiya Sakshya Adhiniyam, No. 47 of 2023, §§ 61, 63, 86 (recognizing electronic and digital records as admissible evidence, prescribing the statutory conditions governing their proof, and creating only limited presumptions regarding the authenticity and integrity of certain secure electronic records and electronic signatures).

evidences.

12. VICTIM COMPENSATION AND WITNESS PROTECTION

A complete response to collective violence cannot be limited to punishment. Victims may experience continuing physical, psychological, social and economic consequences, while witnesses may face pressure or intimidation.¹⁶

Section 396 of the BNSS concerns with the *Victim Compensation Scheme* and Section 398 talks about *Witness Protection Scheme*. Their relevance is heightened in collective-violence cases because the social environment surrounding an incident may continue to affect access to justice after the immediate violence has ended.

Victim-centred measures must nevertheless coexist with fair-trial guarantees. Compensation does not determine criminal guilt, and witness protection cannot replace evidentiary scrutiny.

The remedial dimension also complements the framework in *Tehseen*¹⁷. Prevention, punishment and remedy should be treated as interconnected rather than isolated components. A criminal justice response is incomplete if it prosecutes an offence but fails to provide lawful mechanisms through which affected persons can obtain available protection and remedies.

13. THE IMPLEMENTATION GAP

The principal challenge after the BNS is not necessarily legislative absence. It is the relationship between statutory design and institutional implementation.

A legal framework may contain specialised offences, forensic mechanisms, digital-evidence rules, victim compensation and witness protection while still producing limited practical results if investigations are delayed, evidence is inadequately preserved, institutions lack capacity or victims and witnesses cannot effectively participate in the justice process.

¹⁶ *Tehseen S. Poonawalla*, (2018) 9 SCC 501 (directing States to adopt preventive, remedial, and punitive measures against mob violence, including victim compensation, rehabilitation, and witness protection); *Mahender Chawla v. Union of India*, (2019) 14 SCC 615 (approving the Witness Protection Scheme, 2018, and recognizing that witness intimidation undermines the administration of criminal justice); *Ankush Shivaji Gaikwad v. State of Maharashtra*, (2013) 6 SCC 770 (holding that victim compensation is an integral component of criminal justice and emphasizing that victims require rehabilitation in addition to punishment of offenders).

¹⁷ *Tehseen S. Poonawalla*, (2018) 9 SCC 501.

The *law-in-action perspective* is therefore essential. Three levels should be examined together: substantive law, procedural and evidentiary mechanisms, and institutional capacity.

The first level concerns whether the conduct and its ingredients are sufficiently clear. The second concerns whether authorities can investigate and prove those ingredients. The third concerns whether institutions can prevent violence, protect affected persons and ensure accountability.

14. COMPARATIVE PERSPECTIVE AND REFORM LESSONS

Comparative analysis can help identify alternative approaches to collective identity-based violence, but foreign legislation cannot simply be transplanted into the Indian constitutional and criminal-law system.

Indian state-level initiatives and proposed measures demonstrate that the demand for a specialised response to mob violence predates the BNS.¹⁸ They also illustrate that statutory definition is only one component of an effective framework; prevention, investigation, compensation and witness protection are equally important.

The United States provides a distinct example through the *Emmett Till Anti lynching Act*¹⁹ of 2022. The legislation illustrates the symbolic and legal significance that can accompany federal recognition of lynching as a distinct form of wrongdoing. The American constitutional structure and historical experience, however, differ substantially from India's.

The comparative lesson for India is therefore institutional rather than transplant-based. Specialised criminalisation may perform an important signalling and deterrent function, but its effectiveness depends on the wider legal system.

A separate comprehensive anti-lynching statute should accordingly not be treated as automatically necessary merely because Sections 103(2) and 117(4) have limitations. Further

¹⁸ *The Manipur Protection from Mob Violence Bill*, 2018; *The Rajasthan Protection from Lynching Bill*, Bill No. 22 of 2019 (Raj.); *The West Bengal (Prevention of Lynching) Bill*, Bill No. 21 of 2019 (W.B.); *The Jharkhand (Prevention of Mob Violence and Mob Lynching) Bill*, 2021; see also *Tehseen S. Poonawalla v. Union of India*, (2018) 9 SCC 501 (calling upon Parliament and State Legislatures to consider appropriate legislation to combat mob lynching).

¹⁹ *Emmett Till Antilynching Act*, Pub. L. No. 117-107, 136 Stat. 1125 (2022) (amending 18 U.S.C. § 249 to expressly designate lynching as a federal hate crime and prescribe enhanced criminal liability for qualifying conspiracies resulting in death or serious bodily injury).

legislation should be considered if empirical and judicial experience demonstrates persistent gaps that cannot adequately be addressed through the existing framework.

15. FINDINGS

The analysis produces the following findings.

First, Sections 103(2) and 117(4) constitute a *significant development because they expressly address specified forms of group-based violence* involving five or more persons acting in concert on enumerated or similar identity-related grounds.

Second, the *provisions are narrower than the broader social phenomenon described as mob lynching*. Their application depends upon proof of specific statutory ingredients.

Third, the five-person threshold and the requirement of acting in concert provide both clarity and limitation. They assist in identifying the specialised category but *may leave some forms of collective violence outside it*.

Fourth, the identity-related ground presents a significant evidentiary question. *Guilt under these provisions should not be inferred automatically from the victim's identity*; the prosecution must establish the statutory connection.

Fifth, the *BNS cannot be assessed in isolation*. Its substantive provisions operate alongside constitutional principles, *Tehseen*²⁰ case, the BNSS and the BSA.

Sixth, the most important post-BNS challenge is *implementation*: institutional capacity, evidence preservation, individualised investigation, victim and witness protection and meaningful accountability.

16. RECOMMENDATIONS

First, Sections 103(2) and 117(4) should be applied according to their precise statutory ingredients. “Mob lynching” should not substitute for proof of the offence charged.

Second, investigations should distinguish individual participation from mere presence.

²⁰ Tehseen S. Poonawalla, (2018) 9 SCC 501.

Evidence concerning concerted action and the relevant identity-based ground should be carefully examined.

Third, implementation of BNSS forensic requirements should be supported by adequate personnel, equipment, training and infrastructure.

Fourth, investigative agencies should strengthen lawful preservation, authentication and presentation of electronic and digital evidence.

Fifth, victim compensation and witness protection mechanisms should be effectively implemented in appropriate cases while preserving fair-trial rights.

Sixth, the preventive and accountability-oriented framework developed in *Tehseen*²¹ should continue to guide institutional responses to collective violence.

Seventh, reliable and appropriately disaggregated information concerning invocation and outcomes of Sections 103(2) and 117(4) should be maintained to permit meaningful evaluation.

Eighth, further legislative intervention should be evidence-led. A separate comprehensive anti-lynching statute may be considered if recurring gaps remain after experience under the existing BNS, BNSS, BSA and constitutional framework.

17. CONCLUSION

The Bharatiya Nyaya Sanhita, 2023 has altered India's substantive criminal-law response to specified forms of collective identity-based violence. Sections 103(2) and 117(4) provide a specialised statutory response to qualifying cases of group-based murder and grievous hurt.

Their significance should neither be understated nor overstated. They represent an important legislative development, but they do not constitute an exhaustive legal definition of every form of mob lynching and cannot independently address every preventive, investigative and remedial dimension of collective violence.

The BNS therefore forms one component of a wider constitutional and criminal-justice framework. Articles 14 and 21 of the Constitution of India provide the constitutional

²¹ *Id.*

foundation for *equal protection* and *protection of life and personal liberty*. *Tehseen*²² contributes preventive, remedial and accountability-oriented dimensions. The BNSS provides procedural mechanisms, while the BSA provides the evidentiary framework for electronic and digital records.

The central challenge is implementation. A specialised penal provision can identify and punish qualifying conduct, but its effectiveness depends upon accurate investigation, individualised attribution, reliable evidence, institutional capacity and meaningful protection of victims and witnesses.

The five-person threshold and the requirement of acting in concert illustrate the need to balance recognition of collective criminality with individual criminal responsibility. Similarly, the identity-related element requires evidence-based adjudication rather than assumptions based solely upon the identity of the victim or accused.

The ultimate measure of reform is therefore not the existence or severity of a statutory punishment alone. It is whether the legal system can prevent collective violence, protect persons against identity-based targeting, hold responsible those whose criminal liability is established, provide meaningful remedies and preserve constitutional guarantees of fairness and equality. Sections 103(2) and 117(4) of the BNS provide an important foundation. Their long-term effectiveness will depend upon the institutional and constitutional ecosystem within which they operate.

²² *Id.*