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# **TREATMENT OF MOB LYNCHING (BASED ON RELIGION) AND COLLECTIVE VIOLENCE UNDER THE BHARATIYA NYAYA SANHITA, 2023**

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Rida Kausar, Amity Law School, Amity University Chhattisgarh, India

Dr. Pratima Choubey, Assistant Professor, Amity Law School, Amity University  
Chhattisgarh, India

## **ABSTRACT**

When a crowd becomes a weapon, organized, emboldened, and fueled by hatred toward a particular faith, the result is not merely a crime of violence. It is a statement that your identity makes you a target, and the law will not protect you. From Mohammad Akhlaq in Dadri to Pehlu Khan in Alwar, the pattern has been disturbingly consistent, where, a rumour spreads, a crowd assembles, and a person is beaten, sometimes to death, while the aftermath brings delayed FIRs, weak prosecutions, and acquittals.

It is in this context that the Bharatiya Nyaya Sanhita, 2023 (BNS) arrives with a notable development in Section 103(2), which for the first time explicitly criminalises mob lynching on the basis of religion, caste, race, or community, prescribing death or life imprisonment. For decades, courts and civil society had demanded exactly this recognition, arguing that treating mob lynching as ordinary murder fundamentally misunderstood its nature. This paper examines whether that shift is more than symbolic.

It traces the historical evolution of mob violence in India, analyses the scope and limitations of Section 103(2), and compares India's approach with that of the United States, the United Kingdom, and South Africa. It then confronts the institutional gaps no single provision can cure, that is, investigative failures, evidentiary challenges, witness protection, and political interference before arguing that mob lynching must be understood as a hate crime in the fullest sense, not just a violent act, but a targeted message of subordination directed at an entire community.

The BNS represents a genuine step forward. But a provision without enforcement infrastructure, prosecutorial will, and a broader commitment to equal protection risks becoming a fig leaf. India needs both the right law and the resolve to use it.

## **Introduction**

There is something uniquely disturbing about mob violence. It is not merely the brutality of the act itself but the fact that ordinary people collectively decide that a person deserves to die. No trial. No evidence. No appeal. Just a crowd, a rumour, and a verdict delivered through fists and iron rods.

Mob lynching is extrajudicial violence where a group appoints itself as judge, jury, and executioner. But when that violence is driven by religious identity, when a person is targeted because of what he eats, whom he prays to, or whom he loves, it ceases to be an ordinary crime. It becomes a hate crime. And the law, for a long time in India, had no real vocabulary for it.

The pattern has become grimly familiar. A rumour circulates, often on WhatsApp, alleging cow slaughter, interfaith relationships, or some vague offence against religious sentiment. The allegation is rarely verified. What follows is swift and violent. In case after case, from Dadri in 2015, to Alwar in 2017, to Hapur in 2018, the victim was targeted not for anything they had provably done, but for who they were. Their religious identity was both the accusation and the sentence.

India's constitutional framework is unambiguous on this. Articles 14, 15, and 21 guarantee equality, non-discrimination on grounds of religion, and the right to life respectively. Mob lynching rooted in religious hatred is a simultaneous assault on all three. When the state fails to prosecute such violence effectively, it not only fails the victim but also becomes complicit in the constitutional violation.

For decades, Indian criminal law responded with blunt, inadequate tools. Section 302 of IPC addressed murder whereas Section 149 theoretically attracted vicarious liability for unlawful assembly. But these provisions were designed for individual culpability, not collective violence. They required courts to isolate specific acts within the chaos of a mob, were blind to motive, and treated religiously motivated lynching no differently from any other homicide. The consequences were predictable, including sloppy investigations, hostile witnesses, collapsed prosecutions, and in several cases, survivors charged alongside their attackers.

The Bharatiya Nyaya Sanhita, 2023 represents an attempt to correct this. Section 103(2), which prescribes death or life imprisonment where a group of five or more persons commits murder

on the basis of religion, caste, race, community, or similar identity grounds, is the first provision in Indian legislative history to explicitly name and criminalise mob lynching as a distinct offence. The identity-based motivation is not merely an aggravating circumstance but an element of the offence itself.

This is significant. But significance and effectiveness are not the same thing. Whether Section 103(2) can translate legislative intent into actual accountability forms the central concern of this paper.

### **Evolution of Mob Lynching in India**

To understand why Section 103(2) of the BNS was necessary, one must first understand how mob violence in India developed not as a sudden aberration but as a recurring feature of the country's social landscape that mutated across different eras while retaining one constant, namely that people are targeted not for what they have done but for who they are.

#### **Phase I: The Pre-Independence and Partition Era (Pre 1947)**

The roots of organised communal mob violence in India run deep into the colonial period. Britain's deliberate policy of classifying and dividing populations along religious lines created fault lines that proved catastrophically durable. Their violent consequences were most fully realised during the Partition of 1947, one of the largest forced migrations in recorded history, where an estimated one to two million people were killed in explicitly religious targeting by mobs operating on both sides of the new border. State institutions had collapsed and accountability was essentially non-existent. The lesson embedded in this era, that mass religious violence would not be meaningfully punished, cast a long shadow over everything that followed.

#### **Phase II: Post-Independence communal violence (1947 to 2014)**

The decades after Independence produced a grim cycle of large scale communal riots, often clustering around moments of political tension or manufactured provocation. The 1984 anti-Sikh violence, where mobs in Delhi systematically killed over 3,000 people in three days, in many cases with police standing aside, demonstrated how organised mob killing could occur with near-total impunity. The 1992-93 Bombay riots, following the demolition of the Babri Masjid, killed over 900 people and exposed deep institutional bias in the police response, as

documented by the Justice Srikrishna Commission. The 2002 Gujarat violence, over a thousand dead, hundreds of thousands displaced, eventually produced Supreme Court intervention and a Special Investigation Team, but only after years of obstruction.

What distinguished this phase was the organised, often politically coordinated nature of the violence. Yet the legal response remained limited to general provisions, namely murder, rioting, unlawful assembly. Courts had no framework that treated the communal motivation as a distinct legal element warranting special treatment.

### **Phase III: Vigilante lynching in the Digital Age (Post-2015)**

After 2015, a qualitatively different form of violence emerged in the form of localised, vigilante lynching which is smaller than a riot, but targeted and ideologically explicit. The triggers became predictable: unverified allegations of cow slaughter, beef transport, or interfaith relationships, almost always spread through WhatsApp before any facts could be checked.

Mohammad Akhlaq, killed in Dadri in 2015 after a rumour about beef in his home, which was later found to be mutton, became the first major symbol of this phase. Pehlu Khan, a dairy farmer beaten to death in Alwar in 2017 while transporting legally documented cattle, became another. Eight accused in that case were acquitted, a verdict widely condemned as a failure of prosecution. Tabrez Ansari, tied to a pole in Jharkhand in 2019, beaten for hours, and forced to chant religious slogans before dying four days later. He was initially charged under culpable homicide rather than murder, and the classification revised only after public outrage.

Three features define this contemporary phase. First, digital technology functions as a violence accelerant because fabricated content mobilises crowds faster than corrections can travel. The Supreme Court in *Tehseen S. Poonawalla v. Union of India* (2018) specifically directed Parliament to legislate against lynch mobs, a call unanswered for several years. Second, an organised vigilante ecosystem consisting of cow protection groups and self-appointed community enforcers operates with varying degrees of political cover, giving the violence an ideological architecture that distinguishes it from spontaneous rage. Third, there is a recurring inversion of victimhood in which, in multiple cases, survivors were charged alongside or instead of their attackers, reflecting an institutional culture that treated the mob's motivations as legitimate.

The form of violence changed across these three phases moving from Partition massacres to organised riots to decentralised vigilante attacks, but the underlying logic did not. Certain people can be targeted because of their religious identity, and the law will not respond effectively. It was precisely to break that logic that Section 103(2) of the BNS was enacted.

### **Problems and Gaps in Institutional Mechanisms**

A law is only as strong as the institutions that enforce it. Section 103(2) of the BNS may represent a legislative breakthrough, but it enters a landscape where the mechanisms meant to deliver justice, including the police, prosecutors, courts, and state governments, have repeatedly failed victims of mob violence. Five structural gaps continue to undermine accountability even in the wake of legislative progress:

#### **1. The absence of a comprehensive Anti-Lynching Statute**

Section 103(2) criminalises mob lynching resulting in death, but it does not exhaust the problem. Attempted lynching, conspiracy and instigation, online incitement, and victim rehabilitation all remain outside its reach. India still lacks a standalone anti-lynching statute that addresses these dimensions coherently.

The contrast with the United States is instructive. After nearly a century of failed attempts, the United States enacted the Emmett Till Antilynching Act in 2022, classifying lynching as a federal hate crime carrying penalties of up to 30 years. Its significance lies in treating lynching as a category of offence requiring dedicated legislative attention rather than forcing it into general homicide provisions. India, despite a far more urgent ongoing crisis, has taken no equivalent step. Several states, including Rajasthan, West Bengal, Manipur, and Jharkhand, have proposed draft anti-lynching bills, but none has been enacted. The result is a patchwork response to a problem that demands coherence.

#### **2. Judicial Directives that States have chosen to ignore**

In *Tehseen S. Poonawalla v. Union of India* (2018), the Supreme Court described lynching as a "horrendous act of mobocracy" and issued concrete, binding directions: states were to designate nodal officers, identify sensitive districts, establish fast-track courts, and provide compensation to victims. Officials who failed to act were to face departmental proceedings.

Nearly eight years later, compliance remains, at best, partial. Most states have made no credible attempt to designate functional nodal officers or establish fast-track courts for lynching cases. Compensation mechanisms remain inconsistent. When Supreme Court directives can be quietly shelved without consequence, they offer victims the form of justice rather than its substance.

### **3. Investigations that are designed to fail**

The killing of Pehlu Khan in 2017 remains the clearest illustration of deliberate investigative failure. Khan, a dairy farmer transporting legally documented cattle, was beaten to death on a Rajasthan highway by cow vigilantes. He named his attackers in a dying declaration. Video evidence identified several accused. In 2019, all six named accused were acquitted because witnesses had turned hostile, forensic evidence had not been properly collected, and the dying declaration had been left technically vulnerable.

The Pehlu Khan acquittals reflect a systemic pattern in which local police are reluctant to investigate members of vigilante groups whose ideology they often share, digital evidence not secured promptly, witnesses are left without protection, and forensic infrastructure remains insufficient to establish individual culpability within a crowd. Without addressing these investigative failures, even a strengthened criminal provision has limited practical value.

### **4. Misinformation as Infrastructure for Violence**

The Palghar lynching of April 2020 revealed how digital misinformation has become not merely a trigger for mob violence but its organising infrastructure. Two sadhus and their driver were beaten to death by a mob acting on WhatsApp rumours about child kidnappers despite the presence of a police escort. The mob overpowered the officers and killed all three.

False content does not merely provoke anger but also organises it by identifying targets and providing justifications faster than any correction can travel. India's legal framework has not kept pace. There is no mandatory requirement for platforms to intervene during communal tension. Law enforcement lacks the technical capacity to monitor incitement before it produces harm. The Supreme Court's direction in Tehseen Poonawalla to frame rules on social media-driven lynching has produced no durable regulatory response.

## **5. Institutional Bias and the Normalisation of Impunity**

The Tabrez Ansari case exposed the depth of institutional bias that compounds mob violence. In June 2019, Ansari was tied to a pole in Jharkhand, beaten for hours, forced to chant religious slogans before a watching crowd, and died four days later. Police initially registered the case under culpable homicide, not murder, reclassifying to murder only after public pressure. The forced religious chanting was treated as incidental rather than as evidence of hate motivation. The delay in providing medical care was never investigated.

Across all these cases, a pattern emerges more troubling than any individual failure in which institutions consistently treat the religious motivation of mob violence as irrelevant, or worse, as a mitigating factor. Victims are undercharged, witnesses left unprotected, and investigations conducted partially. This is institutional bias in practice, not explicit direction from above, but a pervasive culture of differential treatment shaping every decision from the moment a complaint is filed.

## **6. India in Comparative Perspective**

A brief comparison underscores the distance India still needs to travel. In the United States, federal hate crime legislation enables prosecution when state-level accountability fails, and proved motivation of religious hatred is a distinct aggravating element. In South Africa, the Promotion of Equality and Prevention of Unfair Discrimination Act creates civil remedies alongside criminal liability, recognising that accountability must operate on multiple tracks. In the United Kingdom, the Crime and Disorder Act 1998 requires courts to treat proved hate motivation as a statutory aggravating factor at sentencing.

India's approach, even with Section 103(2), remains reactive and fragmented. There is no oversight mechanism for state-level prosecution failures. There is no civil remedy framework for victims. There is no statutory requirement for courts to treat religious motivation as an aggravating factor below the capital threshold. Section 103(2) is a necessary step. It is not, by itself, a sufficient one.

### **Challenges under the Bharatiya Nyaya Sanhita, 2023**

Enacting Section 103(2) was the easier part. The harder question that courts, prosecutors, and policymakers will grapple with for years is whether the provision can actually be used

effectively, given the legal, institutional, and political obstacles surrounding it. Several challenges significantly limit its reach:-

### **1. The Narrow Scope of Section 103(2)**

The most immediate limitation is structural. Section 103(2) applies only where a mob killing results in death. This means that a victim who is beaten, hospitalised, permanently disabled, or psychologically destroyed by a religiously motivated mob attack, while still but surviving, has no recourse under this provision. Attempted lynching and grievous hurt motivated by identity remain governed by general provisions that carry no recognition of the hate-driven nature of the offence. Given that many lynching incidents do not end in death but nonetheless cause severe and lasting harm, this gap leaves a substantial portion of victims without the specific protection the law was meant to provide.

### **2. The Evidentiary Challenge of Proving Motive**

Section 103(2) requires proof not merely of group violence but of identity based motivation, meaning that the attack occurred because of the victim's religion, caste, or community. In practice, this is a formidable evidentiary burden. Perpetrators rarely announce their motivations explicitly. Mobs are chaotic, their composition shifts, and individual intent dissolves into collective action. Courts must infer motive from circumstantial evidence, including the context of the attack, prior statements, the nature of the allegations made against the victim, the pattern of targeting in the area. Without clear judicial guidance on what standard of proof satisfies the motive element, prosecutors will face inconsistent outcomes, and defence counsel will routinely challenge the identity-based characterisation of the offence.

### **3. Punishment Without Prevention**

The BNS is, fundamentally, a penal code. It responds to crimes after they occur and does not prevent them. Section 103(2) prescribes death or life imprisonment, but it offers nothing in the way of early warning systems, community level tension monitoring, mandatory deradicalisation of vigilante groups, or regulation of the digital rumours that consistently precede mob violence. A criminal provision cannot address the social and ideological conditions that make lynching feel permissible to its perpetrators. Without a parallel preventive framework that engages law enforcement, local administration, civil society, and digital

platforms, the BNS provision will continue to respond to violence that could have been interrupted before it began.

#### **4. Political Patronage and Selective Enforcement**

Perhaps the most corrosive challenge is one that no legal provision can fully neutralise, namely the political environment in which mob lynching occurs. In several documented cases, perpetrators have been publicly garlanded by political figures, visited in custody by legislators, or released on bail through political pressure. Where the ideological sympathies of the state government align with those of the mob, investigation and prosecution become exercises in deliberate underperformance. Police file weak charges, prosecutors present thin evidence, and bail is readily granted. Section 103(2) will not be uniformly enforced across India, and its application will depend heavily on which party governs the state in which the lynching occurs. This political variability is a fundamental challenge to the rule of law that statute alone cannot resolve.

#### **5. The Deeper Crisis: Eroding Trust in Legal Institutions**

Underlying all of these challenges is a more fundamental problem. Mob lynching is, at its core, a rejection of the legal system, a declaration by a group that the state cannot be trusted to deliver justice, and that the crowd must act in its place. But the crisis of institutional trust runs deeper than that. When victims and their families observe that complaints are dismissed, investigations are botched, and perpetrators walk free, their own confidence in the legal system erodes as well. The law becomes, in their experience, an instrument that protects the powerful and abandons the vulnerable. Section 103(2) can only begin to rebuild that trust if it is enforced visibly, consistently, and without regard to the political identity of either the perpetrators or their victims.

#### **Suggestions for Reform**

Identifying the problem is the easier task. What India requires is a concrete, multi layered reform agenda that addresses mob lynching not merely as a law and order failure but as a constitutional crisis demanding legislative, institutional, and societal response. The following suggestions operate across each of these dimensions:-

## **1. Enact a Comprehensive Anti-Lynching Law**

Section 103(2) of the BNS is a meaningful starting point, but it cannot substitute for a dedicated statute. Parliament should enact a standalone anti lynching law that does what the BNS cannot do by defining lynching as a distinct offence, criminalise attempted lynching and grievous hurt motivated by identity, and explicitly penalise those who instigate or conspire to organise mob violence, including those who spread incendiary content online knowing it will produce physical harm.

Such a law should also establish a statutory compensation framework for victims and their families, independent of the outcome of criminal proceedings. A victim should not have to wait for a conviction, which may take years or never arrive, before receiving acknowledgment and support from the state. Several states have proposed such legislation; the absence of a central law has allowed those proposals to languish. A national framework would set a minimum standard that states cannot dilute.

## **2. Strengthen Police Accountability**

The most carefully drafted law is rendered useless if the police who must implement it are unwilling to do so. Reforms here are non-negotiable. Officers who fail to register FIRs in lynching cases, who file deliberately weak charges, or who delay investigation must face mandatory departmental proceedings with real consequences instead of token inquiries. The current system, in which negligence in hate crime cases rarely produces professional consequences, actively incentivises inaction.

Beyond discipline, structural reform is needed. An independent oversight body, insulated from the state governments whose political interests often align with those of perpetrators, should monitor the investigation and prosecution of lynching cases. Body cameras, mandatory case review timelines, and independent audit of charge-sheet quality in identity-based violence cases would reduce the investigative impunity that acquittals like Pehlu Khan's represent.

## **3. Regulate the Digital Pathway to Violence**

No reform agenda for mob lynching is credible without addressing the role of digital platforms in enabling it. WhatsApp in particular has functioned as a violence accelerant in case after case from Dadri to Palghar. Effective regulation requires more than periodic government advisories

to platform companies.

The IT Rules should be strengthened to impose mandatory, real-time content intervention obligations on platforms during periods of verified communal tension. Platforms must bear genuine legal liability for the demonstrable role of their algorithms in amplifying mob-inciting content. Law enforcement agencies require dedicated digital intelligence units trained to identify and act on incitement before it translates into physical harm. Requiring platforms to maintain transparent audit trails of content removal during communal incidents would also enable accountability after the fact.

#### **4. Reform the Judicial and Forensic Process**

Fast-track courts designated specifically for hate crime and lynching cases should be established in every district with a documented history of such violence. These courts must be adequately resourced and not merely fast in name, with case management systems that prevent the years long delays that allow witness memories to fade, evidence to deteriorate, and communities to lose faith in the process.

Witness protection is equally critical. The Witness Protection Scheme, 2018 exists on paper but is inconsistently applied. Witnesses in lynching cases face genuine physical danger and social pressure, and without enforceable protection hostile testimony will continue to be the norm rather than the exception. Forensic reform is also overdue because investment in digital evidence preservation, crowd identification technology, and forensic pathology capacity would directly address the evidentiary gaps that have produced so many acquittals.

#### **5. Invest in Social and Constitutional Awareness**

Law reform and institutional reform will not, on their own, address the ideological conditions that produce mob lynching. A society in which rumours about religious minority communities can mobilise crowds to kill within hours is one experiencing a serious failure of constitutional culture.

Educational curricula at school and university level should explicitly engage with constitutional values such as equality, fraternity, and non-discrimination as living commitments rather than abstract principles. Community-based dialogue initiatives, particularly in districts with histories of communal tension, should be supported and funded by both state and civil society.

The role of religious and community leaders in either legitimising or delegitimising vigilante violence deserves direct engagement. None of this is soft or optional and it is the long-term foundation without which every legal reform remains vulnerable to the next manufactured rumour and the next assembled crowd.

## **Conclusion**

When a mob kills a person because of his religion, two things happen simultaneously. A life is destroyed. And a message is sent, to every member of that community, that their identity makes them a target, and that the state may not protect them. This is why mob lynching rooted in religious identity cannot be treated as ordinary homicide. It is a hate crime whose effects radiate far beyond the immediate victim, corroding the constitutional guarantee of equal protection for entire communities.

The Bharatiya Nyaya Sanhita, 2023 has given legislative form to this understanding through Section 103(2), marking the first time in Indian legal history that identity-based mob killing is named and distinctly punishable. That is genuine progress. But this paper has tried to demonstrate, through case after case, that legislative recognition is the beginning of a response, not its conclusion. Section 103(2) depends on police willing to investigate thoroughly, prosecutors with the will to present evidence effectively, witnesses who are protected, and state governments that treat enforcement as a constitutional obligation rather than a political calculation. Every one of these dependencies has, in documented cases, failed.

The deeper challenge is one that law alone cannot resolve. Mob lynching emerges from a social environment in which certain communities are dehumanised, vigilante violence is politically tolerated, and rumour travels faster than accountability. A statute cannot change that environment. Only a sustained commitment to constitutional values including equality, dignity, the equal worth of every citizen regardless of faith, maintained through education, political leadership, and community engagement, can begin to do so.

India has, with the BNS, taken a step toward treating religiously motivated mob violence with the seriousness it deserves. Whether that step becomes a turning point depends on what follows it across police stations, courtrooms, legislatures, and the broader culture. Section 103(2) is a necessary beginning. What defines it as meaningful is the will to use it.

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