
CRIMINALISATION OF MOB LYNCHING UNDER BHARATIYA NYAYA SANHITA, 2023: A CRITICAL ANALYTICAL STUDY OF LEGAL FRAMEWORK, CONSTITUTIONAL DIMENSIONS AND IMPLEMENTATION CHALLENGES

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ABSTRACT

Mob lynching has emerged as one of the gravest threats to the rule of law and constitutional democracy in India. Such incidents, often driven by caste, religion, language, personal belief, or misinformation spread through digital platforms, undermine the criminal justice system by replacing lawful adjudication with collective violence. Under the erstwhile Indian Penal Code, 1860, mob lynching was prosecuted through general provisions relating to murder, rioting, unlawful assembly, and criminal conspiracy, without recognizing its unique nature as a hate-driven collective offence. The enactment of the Bharatiya Nyaya Sanhita, 2023 (BNS) marks a significant legislative shift by expressly criminalising mob lynching through Section 103(2) and addressing grievous hurt caused by mobs under Section 117(4). This paper critically examines the legal framework introduced by the BNS, analyses its constitutional implications under Articles 14, 19 and 21 of the Constitution of India, evaluates judicial developments, particularly the directions issued by the Supreme Court in *Tehseen S. Poonawalla v. Union of India*, and identifies practical challenges relating to investigation, prosecution and implementation. The study concludes that while the BNS fills an important legislative gap, effective enforcement, police accountability, witness protection and preventive mechanisms remain indispensable for achieving the constitutional promise of justice.

Keywords: Mob Lynching, Bharatiya Nyaya Sanhita, Constitutional Rights, Hate Crime, Criminal Justice.

INTRODUCTION

The rule of law constitutes the cornerstone of every democratic society, requiring that the administration of justice remains exclusively within the authority of the State. Any attempt by private individuals or groups to assume the role of law enforcement threatens constitutional governance and undermines public confidence in legal institutions. Mob lynching represents one of the gravest manifestations of such extra-judicial violence, wherein a group of individuals collectively inflicts violence or causes the death of a person based on suspicion, prejudice, rumour, or perceived wrongdoing without the intervention of lawful judicial processes. In recent years, India has witnessed an alarming increase in incidents of mob violence motivated by religious intolerance, caste discrimination, cow vigilantism, child-lifting rumours, witch-hunting, and misinformation spread through social media platforms.¹

Historically, Indian criminal law did not recognize mob lynching as a distinct criminal offence. Instead, perpetrators were prosecuted under general provisions of the Indian Penal Code, 1860 relating to murder, culpable homicide, unlawful assembly, rioting, criminal conspiracy, and common intention. Although these provisions enabled punishment of offenders, they failed to acknowledge the unique nature of collective violence and the organized participation of large groups acting under shared prejudices. Consequently, law enforcement agencies frequently encountered difficulties in identifying individual culpability, collecting evidence against multiple accused persons, and ensuring successful prosecution.

Recognizing the growing threat posed by mob violence, the Supreme Court of India, in *Tehseen S. Poonawalla v. Union of India* (2018), described mobocracy as an affront to the rule of law and constitutional democracy. The Court directed both the Union and State Governments to adopt preventive, remedial, and punitive measures to curb incidents of mob lynching and recommended the enactment of a separate legislation dealing specifically with this offence.² This landmark judgment significantly influenced subsequent legislative reforms and highlighted the constitutional obligation of the State to safeguard the right to life and personal liberty guaranteed under Article 21 of the Constitution.

The Bharatiya Nyaya Sanhita, 2023 introduces an important legislative innovation by specifically criminalising murder committed by a group of five or more persons acting on

¹ National Campaign Against Mob Lynching, *Lynching Without End* (2019) 5–12

² **The Bharatiya Nyaya Sanhita, 2023**, ss. 3, 61, 103, 189 and 190.

grounds such as race, caste, community, sex, language, place of birth, or personal belief. Section 103(2) prescribes death or imprisonment for life as punishment for such aggravated forms of murder, thereby acknowledging the exceptional gravity of mob lynching.³ The enactment reflects the legislative intent to strengthen deterrence against organized acts of violence and reinforce constitutional values of equality, dignity, fraternity, and social justice.

Despite this significant statutory development, several legal and practical concerns remain unresolved. Questions continue to arise regarding the limited scope of the statutory definition, exclusion of several forms of mob violence, evidentiary burdens, police accountability, witness protection, and the absence of comprehensive victim rehabilitation mechanisms. Therefore, a critical examination of the Bharatiya Nyaya Sanhita is necessary to assess whether the newly introduced provisions adequately address the complex socio-legal realities of mob lynching.

This study critically analyses the criminalisation of mob lynching under the Bharatiya Nyaya Sanhita, 2023 by examining its legal framework, constitutional foundations, judicial developments, and implementation challenges while suggesting reforms for strengthening the criminal justice response against collective violence.

Concept and Evolution of Mob Lynching in India

Mob lynching refers to an act of collective violence wherein a group of individuals unlawfully attacks, assaults, or kills a person on the basis of suspicion, prejudice, identity, or alleged misconduct without following any legally established judicial process. The defining characteristic of mob lynching is that punishment is imposed by an unlawful assembly rather than through the criminal justice system. Such incidents are generally motivated by communal hatred, caste prejudice, vigilantism, moral policing, accusations of theft, cow slaughter, child kidnapping rumours, witchcraft allegations, or misinformation circulated through social media platforms.⁴

The term "lynching" originated in the United States during the eighteenth century and was associated with extrajudicial punishment inflicted by mobs against individuals, particularly African Americans, without judicial trial. Over time, the expression came to describe any unlawful execution or violent punishment carried out by a crowd acting outside the authority

³ *Tehseen S. Poonawalla v. Union of India*, (2018) 9 SCC 501.

⁴ Constitution of India, arts. 14, 19 and 21.

of law. Although India's socio-cultural context differs significantly, incidents of mob lynching similarly reflect the breakdown of legal order and the substitution of collective vengeance for judicial adjudication.

The evolution of mob lynching in India has been influenced by multiple socio-political and technological factors. Earlier incidents largely arose from local disputes, caste conflicts, communal tensions, and accusations of theft. However, the rapid penetration of smartphones and social media has transformed the nature of mob violence. False information relating to child kidnappers, cow slaughter, religious conversion, and communal conspiracy frequently spreads through digital platforms, triggering instantaneous mob mobilisation before law enforcement agencies can intervene.⁵ Consequently, contemporary mob lynching has become increasingly spontaneous, technologically facilitated, and geographically widespread.

Before the enactment of the Bharatiya Nyaya Sanhita, 2023, there was no specific statutory offence addressing mob lynching in India. Criminal liability was determined through general provisions relating to murder, culpable homicide, rioting, unlawful assembly, common intention, and criminal conspiracy under the Indian Penal Code, 1860. While these provisions punished individual offenders, they failed to recognize the aggravated nature of collective violence motivated by discrimination or vigilantism. The absence of a specialised legal framework also resulted in inconsistent prosecution and inadequate institutional accountability.⁶

Judicial intervention significantly shaped the legal understanding of mob lynching. In *Tehseen S. Poonawalla v. Union of India*, the Supreme Court unequivocally condemned mob vigilantism as an attack on constitutional values and declared that no individual or group possesses authority to administer punishment outside the legal process. The Court issued comprehensive preventive, remedial, and punitive guidelines and recommended the enactment of special legislation to combat mob lynching effectively.⁷

The Bharatiya Nyaya Sanhita, 2023 represents the first comprehensive legislative recognition of mob lynching by introducing enhanced punishment for murder committed by a group of five or more persons on specified discriminatory grounds. This statutory recognition reflects an

⁵ K.D. Gaur, *Textbook on Indian Penal Code* (7th edn., Universal Law Publishing, 2023) 684–690.

⁶ B.B. Pande, *The Indian Penal Code* (Allahabad Law Agency, 2022) 412–420.

⁷ Aparna Chandra, *Constitutionalism and Criminal Justice in India* (Oxford University Press, 2021) 186–194.

evolving legislative approach that acknowledges the unique gravity of collective violence and seeks to reinforce constitutional commitments to equality, dignity, fraternity, and the rule of law. Nevertheless, debates continue regarding the adequacy of the statutory definition, its limited scope, and the practical challenges associated with effective implementation.

Legislative Framework under Bharatiya Nyaya Sanhita, 2023

The Bharatiya Nyaya Sanhita, 2023 (BNS) represents a significant reform in Indian criminal law by expressly recognising mob lynching as a distinct aggravated form of homicide. Unlike the Indian Penal Code, 1860, which addressed incidents of mob violence through general provisions relating to murder, unlawful assembly, rioting, and common intention, the BNS introduces a specific statutory provision dealing with murder committed by a group of persons on discriminatory grounds. This legislative recognition reflects the increasing concern over the growing incidents of vigilantism and collective violence in India.⁸

Section 103(2) of the BNS provides that where a group of five or more persons acting together commits murder on the grounds of race, caste, community, sex, language, place of birth, or personal belief, each member of the group shall be punished with death or imprisonment for life along with fine. This provision classifies mob lynching as an aggravated offence by considering both the collective nature of the crime and the discriminatory motive behind it.

In addition, Section 117(4) strengthens criminal liability by prescribing enhanced punishment where grievous hurt is voluntarily caused by five or more persons acting together on similar discriminatory grounds. This provision extends protection even where the victim survives the attack, thereby recognising that mob violence frequently results in serious bodily injuries without necessarily causing death.⁹

The legislative framework under the BNS also continues to operate alongside provisions relating to unlawful assembly, common intention, criminal conspiracy, abetment, and organised crime. Collectively, these provisions enable law enforcement agencies to prosecute both principal offenders and those facilitating collective violence. However, despite this statutory advancement, concerns remain regarding the limited scope of protected grounds, the absence of an independent definition of "mob lynching," and the lack of comprehensive

⁸ The Bharatiya Nyaya Sanhita, 2023, ss. 103(2), 117(4), 189 and 190.

⁹ Constitution of India, arts. 14, 19 and 21.

provisions relating to victim rehabilitation, witness protection, and police accountability. Consequently, while the Bharatiya Nyaya Sanhita marks an important legislative milestone, its effectiveness will largely depend upon purposive interpretation and efficient implementation

Constitutional Dimensions

The criminalisation of mob lynching under the Bharatiya Nyaya Sanhita, 2023 derives its constitutional legitimacy from the fundamental principles embodied in the Constitution of India. Mob lynching constitutes a direct assault upon constitutional governance because it substitutes mob justice for the rule of law and undermines the State's exclusive authority to administer criminal justice. The Constitution obligates the State to protect every individual's life, liberty, dignity, and equality without discrimination.¹⁰

Article 14 guarantees equality before law and equal protection of laws. Victims of mob lynching are frequently targeted because of their caste, religion, ethnicity, language, or other social identities. Such discriminatory violence violates the constitutional guarantee of equal treatment and demands an effective legal response capable of ensuring equal protection to vulnerable communities.¹¹

Article 21, which guarantees the right to life and personal liberty, has been expansively interpreted by the Supreme Court to include the rights to live with dignity, security, bodily integrity, and protection from arbitrary violence. Mob lynching represents one of the gravest violations of Article 21 because victims are deprived of life and liberty without due process of law. The constitutional obligation of the State therefore extends beyond punishment of offenders to include preventive policing, prompt investigation, victim protection, and effective prosecution.¹²

Further, Article 19 guarantees freedom of speech, movement, and association; however, these freedoms cannot be exercised to justify vigilantism, hate speech, or unlawful assemblies that culminate in mob violence. The constitutional value of fraternity, reflected in the Preamble, also requires citizens to promote social harmony and mutual respect irrespective of religious, caste, linguistic, or cultural differences.

¹⁰ B.B. Pande, *The Indian Penal Code* (Allahabad Law Agency, 2022) 412–420.

¹¹ Ministry of Home Affairs, Government of India, *The Bharatiya Nyaya Sanhita, 2023*, Act No. 45 of 2023

¹² Aparna Chandra, *Constitutionalism and Criminal Justice in India* (Oxford University Press, 2021) 186–194.

Thus, the provisions relating to mob lynching under the Bharatiya Nyaya Sanhita reinforce constitutional values by strengthening criminal accountability for collective violence. Nevertheless, constitutional compliance requires not merely legislative enactment but also impartial enforcement, judicial oversight, police accountability, and institutional mechanisms that effectively safeguard fundamental rights.

Judicial Developments (Including *Tehseen S. Poonawalla v. Union of India*, 2018)

Prior to the enactment of the Bharatiya Nyaya Sanhita, 2023, the Indian judiciary played a pivotal role in addressing the growing menace of mob lynching through constitutional interpretation and judicial activism. Although no separate statutory offence existed, constitutional courts consistently emphasised that incidents of mob violence constitute serious violations of fundamental rights and the rule of law.¹

The landmark judgment in *Tehseen S. Poonawalla v. Union of India* (2018) transformed the legal discourse on mob lynching in India. The Supreme Court observed that "horrendous acts of mobocracy cannot be permitted to inundate the law of the land" and declared that no individual or group possesses authority to assume the functions of the criminal justice system.² The Court characterised mob lynching as an affront to constitutional values, human dignity, secularism, and democratic governance.¹³

Recognising the absence of specific legislation, the Supreme Court issued comprehensive preventive, remedial, and punitive guidelines. Preventive measures included the appointment of nodal police officers in every district, identification of vulnerable areas, intelligence gathering, and preventive policing. Remedial measures required immediate registration of First Information Reports (FIRs), prompt investigation, victim compensation, and speedy trials through designated courts. Punitive directions mandated disciplinary action against police officials who deliberately failed to prevent or investigate incidents of mob violence.

The Court further recommended that Parliament enact a separate law specifically dealing with mob lynching so as to provide a comprehensive statutory framework for prevention and punishment. This recommendation significantly influenced the legislative reforms embodied in the Bharatiya Nyaya Sanhita, 2023, particularly the insertion of Section 103(2).

¹³ *Tehseen S. Poonawalla v. Union of India*, (2018) 9 SCC 501.

Apart from *Tehseen S. Poonawalla*, judicial decisions concerning unlawful assembly, common intention, and constitutional protection of life under Article 21 have consistently reinforced the principle that the State bears a positive obligation to prevent collective violence. Consequently, judicial developments laid the constitutional foundation upon which the present statutory framework has been constructed.

Critical Analysis of Sections 103(2) and 117(4) of the Bharatiya Nyaya Sanhita, 2023

Sections 103(2) and 117(4) of the Bharatiya Nyaya Sanhita, 2023 constitute the first explicit statutory recognition of mob lynching in Indian criminal law. Their inclusion marks a progressive departure from the Indian Penal Code, 1860, which addressed such incidents only through general provisions relating to murder, rioting, and unlawful assembly. The enactment acknowledges that crimes committed by organised mobs possess greater social harm than offences committed by individual perpetrators.

Section 103(2) prescribes death or imprisonment for life where murder is committed by five or more persons acting together on specified discriminatory grounds. Although the provision enhances punishment, its scope remains comparatively narrow. It criminalises only murders motivated by race, caste, community, sex, language, place of birth, or personal belief, thereby excluding numerous incidents arising from rumours of child lifting, accusations of theft, witch-hunting, honour-based violence, moral policing, and digital misinformation. Consequently, several forms of mob violence may continue to be prosecuted under ordinary homicide provisions rather than under the aggravated offence.¹⁴

Similarly, Section 117(4) criminalises grievous hurt caused by five or more persons acting on similar discriminatory grounds. While this provision broadens legal protection beyond cases resulting in death, it still requires proof of discriminatory motivation, which may present considerable evidentiary challenges during investigation and trial.

Another limitation is the absence of an independent statutory definition of "mob lynching." The legislation also fails to incorporate detailed provisions concerning witness protection, victim rehabilitation, police accountability, command responsibility, and compensation, despite recommendations made by the Supreme Court in *Tehseen S. Poonawalla*.³

¹⁴ Upendra Baxi, *The Future of Human Rights* (3rd edn., Oxford University Press, 2017) 152–160.

Therefore, although Sections 103(2) and 117(4) represent important legislative advancements, a more comprehensive legal framework addressing prevention, investigation, victim rights, institutional accountability, and technological misuse would strengthen India's response to collective violence and ensure more effective implementation of constitutional guarantees.

Implementation Challenges

Although the Bharatiya Nyaya Sanhita, 2023 (BNS) has introduced a specific legal framework to address mob lynching, the practical implementation of its provisions presents several legal, institutional, and administrative challenges. The effectiveness of Sections 103(2) and 117(4) depends not merely on statutory recognition but also on efficient investigation, prosecution, judicial interpretation, and institutional accountability. In the absence of robust implementation mechanisms, the legislative objective of deterring collective violence may remain largely unrealised.¹⁵

One of the foremost challenges is the absence of a comprehensive statutory definition of "mob lynching." Section 103(2) criminalises murder committed by a group of five or more persons acting on specified discriminatory grounds; however, numerous incidents of mob violence arise from allegations of theft, child kidnapping, witchcraft, moral policing, inter-faith relationships, or rumours spread through social media. Such incidents may not satisfy the statutory requirements of discriminatory motivation, compelling prosecuting agencies to rely upon the general provisions relating to murder or grievous hurt. This limitation creates uncertainty in legal interpretation and inconsistent application of the law.

Another significant challenge concerns investigation and evidence collection. Mob lynching generally involves a large number of participants acting simultaneously, making it difficult to identify the actual perpetrators and establish individual criminal liability. Many offenders conceal their identities, while eyewitnesses frequently hesitate to cooperate because of fear of retaliation or social pressure. Digital evidence such as mobile phone recordings, CCTV footage, and social media messages may prove useful, but effective collection and preservation require specialised technological capacity, which remains uneven across police agencies.¹⁶

Police accountability also remains a critical concern. Several incidents of mob lynching have

¹⁵ **The Bharatiya Nyaya Sanhita, 2023**, ss. 103(2) and 117(4).

¹⁶ Ministry of Home Affairs, Government of India, **The Bharatiya Nyaya Sanhita, 2023**, Act No. 45 of 2023.

revealed delayed police intervention, failure to register First Information Reports promptly, inadequate investigation, and occasional allegations of institutional bias. Although the Supreme Court in *Tehseen S. Poonawalla v. Union of India* directed States to appoint nodal police officers and initiate disciplinary proceedings against negligent officials, the Bharatiya Nyaya Sanhita does not expressly incorporate these institutional safeguards. Consequently, implementation continues to depend largely upon executive compliance rather than statutory obligation.¹⁷

Witness protection constitutes another major challenge. Victims and witnesses frequently belong to socially or economically vulnerable communities and often face intimidation from influential perpetrators. India presently lacks a comprehensive statutory witness protection framework specifically designed for mob lynching cases. Without effective protection, witnesses may turn hostile, thereby weakening criminal prosecution and reducing conviction rates.

Further, victim compensation and rehabilitation mechanisms remain inadequate. Mob lynching frequently results not only in physical injury or death but also in severe psychological trauma, economic hardship, and social ostracism suffered by victims' families. The BNS primarily emphasises punishment of offenders but does not establish a specialised scheme for rehabilitation, counselling, relocation, or long-term financial assistance.

Finally, combating mob lynching requires addressing its underlying social causes, including communal polarisation, caste discrimination, religious intolerance, misinformation, and digital hate campaigns. Criminal legislation alone cannot eliminate these structural factors. Effective implementation therefore requires coordinated efforts involving police reforms, judicial efficiency, public awareness programmes, digital regulation, community policing, and strict enforcement of constitutional values. Only through such a multidimensional approach can the objectives of the Bharatiya Nyaya Sanhita, 2023 be fully realised.

Comparative Perspective

A comparative examination of foreign legal systems demonstrates that several jurisdictions have adopted specialised legislative and institutional mechanisms to combat mob violence, hate crimes, and extra-judicial killings. Although the socio-political contexts differ, these experiences provide valuable guidance for strengthening India's legal response under the

¹⁷ K.D. Gaur, Textbook on Indian Penal Code (7th edn., Universal Law Publishing, 2023) 684–690.

Bharatiya Nyaya Sanhita, 2023.

The United States represents one of the earliest jurisdictions to enact legislation against lynching. Historically, racial lynching, particularly against African Americans, remained a persistent form of collective violence during the nineteenth and twentieth centuries. After decades of legislative efforts, the Emmett Till Antilynching Act, 2022 formally recognised lynching as a federal hate crime. The legislation criminalises conspiracies resulting in bodily injury or death motivated by racial or other protected characteristics and imposes enhanced federal penalties. Unlike the Bharatiya Nyaya Sanhita, which primarily addresses murder committed by groups of five or more persons, the American framework places greater emphasis on hate crime motivation and federal investigative jurisdiction.¹⁸

The United Kingdom does not have a separate offence of mob lynching; however, collective violence is effectively addressed through legislation relating to murder, violent disorder, unlawful assembly, public order offences, conspiracy, and hate crimes. The Public Order Act 1986, together with sentencing enhancements under criminal justice legislation, enables courts to impose stricter punishment where offences are motivated by racial or religious hostility. Strong police intelligence systems, surveillance mechanisms, and crowd-control strategies further contribute to preventing collective violence.¹⁹

South Africa similarly addresses collective violence through constitutional protections, criminal law provisions, and specialised legislation combating hate crimes and public violence. Given its constitutional commitment to equality and human dignity, South African courts have consistently emphasised that vigilantism undermines democratic governance and violates fundamental rights. The criminal justice system also places considerable importance on victim participation and constitutional accountability.

International human rights law likewise condemns mob violence and imposes positive obligations upon States to protect life and prevent arbitrary deprivation of liberty. Instruments such as the Universal Declaration of Human Rights (1948) and the International Covenant on Civil and Political Rights, 1966 require governments to investigate unlawful killings, prosecute offenders, and provide effective remedies to victims. The United Nations Human Rights Committee has repeatedly emphasised that States must exercise due diligence to prevent violence committed by private individuals where authorities knew or ought reasonably to have

¹⁸ **Emmett Till Antilynching Act**, Pub. L. No. 117–107, 136 Stat. 1124 (2022) (United States).

¹⁹ **Public Order Act 1986** (United Kingdom).

known of the risk.²⁰

Compared with these jurisdictions, the Bharatiya Nyaya Sanhita, 2023 represents an important legislative advancement by specifically recognising mob lynching as an aggravated offence. Nevertheless, India's framework remains comparatively limited because it focuses primarily on discriminatory group murders while omitting comprehensive preventive measures, police accountability, victim rehabilitation, witness protection, and institutional monitoring. Foreign legal models demonstrate that criminalisation alone is insufficient unless accompanied by preventive policing, specialised investigative agencies, community awareness, digital monitoring of hate speech, and effective victim-centred justice.

Therefore, comparative experience suggests that India should supplement the Bharatiya Nyaya Sanhita with comprehensive anti-lynching legislation incorporating preventive, remedial, and rehabilitative measures, thereby ensuring greater conformity with constitutional principles and international human rights standards.

Conclusion

The Bharatiya Nyaya Sanhita, 2023 marks an important milestone in India's criminal justice reform by expressly criminalising mob lynching under Section 103(2). The legislation acknowledges that collective hate-based violence poses a unique threat not only to individual victims but also to constitutional democracy and the rule of law. By imposing stringent punishment upon every member of a discriminatory mob, Parliament has attempted to deter vigilante violence and reinforce constitutional values of equality, dignity and life.

Nevertheless, criminalisation alone cannot eradicate mob lynching. Effective implementation requires professional policing, impartial investigation, witness protection, speedy trials, digital regulation against misinformation and administrative accountability. A comprehensive anti-lynching framework, consistent with the Supreme Court's recommendations in *Tehseen S. Poonawalla*, would further strengthen India's commitment to constitutional governance. Ultimately, the fight against mob lynching is not merely a question of criminal law but a test of the nation's dedication to justice, human dignity and the supremacy of the Constitution.

²⁰ **International Covenant on Civil and Political Rights**, 1966, arts. 2, 6 and 26.

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