

HOW BHARATIYA NYAYA SANHITA ADDRESSES MOB LYNCHING AND HATE CRIMES

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VOLUME 1, ISSUE 2 (JULY- DECEMBER 2025)

ABSTRACT

The research paper is a critical, detailed analysis of the Bharatiya Nyaya Sanhita, 2023 (BNS), with a focus on its innovative directive mechanism dealing with the chronic ailment of mob lynching and hate crimes in the Indian socio-legal environment. The study challenges the original legal definitions of the BNS, the procedural framework, and the distinctive expression of motive-inflicted violence through a stringent doctrinal and comparative approach and reveals important gaps and new threats that are still not discussed in the academic or policy spheres.

Analysis is done at various dimensions of convergence. First, it assesses the consequence of the new group-size threshold and concert requirements, both in terms of the complications of technology and sociology that can be difficult to capture legally. Second, the article provides a new criticism of the institutional liabilities by highlighting the BNS failure to include preventive and reparative state actions in their services, which points to the long-standing gap existing between the legislative intentions and the administrative operations. Third, the study contributes to the intersectionality discussion, showing how the omission of gender identity, sexual orientation and disability as a topic of statutory protection contributes to legal invisibility of the most marginalized in India.

In addition, the paper examines the lack of legal victim compensation and community repair systems, which has been contextualized as one of the global best practices in restorative justice, victimology, and transitional legal reform. It goes as well into the two-sided threat of statutory misuse and offers new analytic insight on the possibility of elite capture, selective prosecution, and partisan distortion, a threat that is rarely scrutinized in the legislative setting.

Through a comparison of a new paradigm of penal arrangement in India with global experience in South Africa, the United Kingdom and elsewhere by combining both empirical and theoretical

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tools in a comprehensive reflection, this paper is a synthesis of practical recommendations (including, but not limited to, a statutory amendment, institutional re-engineering and so on). Finally, the research will strive to shift past tokenistic legal innovation towards supporting holistic, intersectional and victim-centric approaches.

The paper is therefore a unique and timely additional to the literature on criminal law reform, constitutional government, and social justice, filled with elucidation insights, which can be used to enrich the scholarly discourse and shape practical legislative and administrative interventions in the prevention of hate-driven violence in India.

Keywords: Mob Lynching, Crime



INTRODUCTION

The criminal laws in India are at a critical stage of developments and this is through embracing the Bharatiya Nyaya Sanhita, 2023 (BNS). Indian Penal Code, 1860 had not appreciated heinous collective violence, or mob lynching, which are characterized by extrajudicial killings carried out by a group of people who may harbour hate and bigotry. Such silence generated demands to bring those crimes up in the law books and harshly penalize them like following a series of sadistic cases that appalled the conscience of the nation. The BNS, in a first instance, explicitly criminalises mob lynching, and offers indicators of a radicalisation in the legal reaction to rising intolerance by trying to cover hate crimes.²

With the enactment of the Bharatiya Nyaya Sanhita, 2023, BNS, it is not just that the Indian penal law is going to change but also that the nation is going to address the issue of aligning the past legal frameworks with new risks. Although the substitution of the Indian Penal Code, 1860, has been traditionally framed as decolonization, the situation is more complex than that: the BNS is a centre of conflicts between the powers of the administrative state, the majoritarian social forces, and the constitutional principles of the inclusion and equality. In this context, against the recent spurt of mob violence and hate crimes, the BNS is both an affirmation of improvement as well as points out the shortages that persist particularly in those areas where the letter of the law has been required to grapple with collective action problems that historically have baffled the Indian justice system. Concepts of punishment, deterrence and social remedy under the BNS therefore beckon the wider discussion which is at the crossroads of criminal law reform, democratic liberalism and transitional justice theory. This reflection would help it to prevent what critics call “token lawmaking”, the passing of new laws that, despite some symbolic force, leave underlying pathologies untouched, in particular, the historic complicity or inertia of state organs in addressing group violence.³⁴⁵

² *Mob Lynching under Bharatiya Nyaya Sanhita, 2023*, Drishti Judiciary, <https://www.drishtijudiciary.com/to-the-point/bharatiya-nyaya-sanhita-&-indian-penal-code/mob-lynching-under-bharatiya-nyaya-sanhita-2023> (last visited Aug. 7, 2025).

³ Anubhav Kumar, *Bharatiya Nyaya Sanhita: An Overview* (May 2024), <https://cdnbbsr.s3waas.gov.in/s3ec0548042b1dae4950fef2bd2aafa0b9/uploads/2024/05/2024050922.pdf>.

⁴ Gayatri Pradhan, The Impact of Bharatiya Nyaya Sanhita, 2023 on Indian Criminal Jurisprudence: A Critical Analysis, 7 *Indian J.L. & Legal Rsch.* (May 3, 2025), <https://www.ijllr.com/post/the-impact-of-bharatiya-nyaya-sanhita-2023-on-indian-criminal-jurisprudence-a-critical-analysis>.

⁵ S.M. Aamir Ali & Pritha Mukhopadhyay, Bharatiya Nyaya Sanhita: Decolonizing Criminal Law or Colonial Continuities? 62 *Int'l Annals Criminology* 406, 406–25 (2024), <https://doi.org/10.1017/cri.2024.20>.

ADDRESSING MOB LYNCHING IN THE BNS

Specific Legal Provisions- Sections 103(2) and 117(4) of BNS

With Section 103(2), the BNS boldly passes an aggressive legislative step, where it considers mob lynching as a form of aggravated crime. According to this section, when murder occurs “on grounds of race, caste, community, sex, place of birth, language, personal belief or any other such ground by a group of five or more persons acting in concert it is punishable by death or life imprisonment and each member of the group is liable to fine”. It is a major change of the former legal system when there were general laws prosecuting these offences under the categories of murder, rioting, or unlawful assembly, with no special attention and punishment.⁶

Section 117(4) extends to criminalise the following situations where grievous hurt occasioned by a mob acting on like discriminatory grounds is punishable by imprisonment of up to seven years and/or fine. This definition of these offences allows the BNS to understand that these are a specific harm to society that is committed through mob violence and also to recognize the bigotry at the back-end of these behaviours.⁷

Legislative Rational and Comparisons-

These provisions have the legislative purpose that is punitive and preventive. A different kind of lynching including mob lynching is now regarded as district and aggrieved rather than as regular murder or rioting. Collective intent and group ideology, as well as the break of social order due to lynching, are recognized by the law. This modernization has been labelled as a critical appreciation of the Indian reality by contemporary legal commentators and Law Commission and portrayed acts of violence as usually driven by bigotry and moral policing.⁸

Also, the discrimination motive is clearly stated, which proves the intention of the law to prevent any collective violence of the hate nature. Years of horrific cases, which had included the Dadri lynching (Mohammad Akhlaq case), Jharkhand (Tabrez Ansari case) lynching, and Palghar lynching, had stimulated this shift and made violence a reaction to rumours, community tensions,

⁶ Press Information Bureau, *Mob Lynching and Snatching Related Provisions in New Criminal Laws*, Ministry of Home Affairs (Dec. 4, 2024), <https://www.pib.gov.in/PressReleseDetailm.aspx?PRID=2080661>

⁷ *Mob Lynching*, Drishti IAS (Feb. 18, 2025), <https://www.drishtiias.com/daily-updates/daily-news-analysis/mob-lynching-9>.

⁸ *Criminalization of Mob Lynching under the Bhartiya Nyaya (Second) Sanhita, 2023, NUALS L.J.* (Apr. 22, 2024), <https://nualslawjournal.com/2024/04/22/criminalisation-of-mob-lynching-under-the-bhartiya-nyaya-second-sanhita-2023/>.

and hate targeting. Such ingredients showed how insufficient the previous legislation was, that the time demanded legislative clarification.

New Legal Definitions and the Problem of Thresholds-

Section 103(2) of the BNS contains a formally separate crime of mob lynching, where five or more individuals are working together to commit murder through identity-based identity markers, including religion, caste, race, language, and personal belief. Although this is generally viewed as a reaction to the high-profile lynching incidents observed in the past ten years, the provision of the statute that requires a minimum age group of five has been heavily criticised. Experts of mob violence claim that this is an artificially high threshold, particularly bearing in mind known examples of flash mobs of vigilante groups who work with only two or three members, and still cause terror and the destruction of social cohesion on a grand scale. Such a numerical standard, thus, is particularly prone to continuing situations of statistical underreporting and may also permit perpetrators to plan smaller attacks deliberately to avoid the situation of receiving aggravated punishment. Additionally, critics would argue that the language acting in concert as understood by the law might be considerable outside of touch with the reality of decentralized, network-based mob formation. To keep abreast of the state, the definition must be based on a technologically literate notion of how hate-based collectives are generated, dissolved, and reconstituted, which does not exist within the BNS and previous suggestions. This gap can only be enhancing in international comparisons: as it is, most countries make it a criminal offence to engage in collective hate violence, even though the actual group size is not significant, with the liability based on the seriousness of the discriminatory motive and the larger picture of damage.⁹

Omission of Institutional Liabilities and Preventive Protocols-

The BNS usually avoids the issue of state liability and police misconduct even when the Supreme Court in *Tehseen S. Poonawala v. Union of India* (2018) provides detailed guidelines that mandate preventive measures, special court proceedings, expedience, and nodal police officers. Although the Manipur and Rajasthan anti-lynching laws are flawed, they directly target police or administrative inaction and have positive obligations, including immediate action, protection of victims and a requirement to file an immediate FIR, which are supported with

⁹ *The Bharatiya Nyaya Sanhita*, 2023, PRS Legislative Research, <https://prsindia.org/billtrack/the-bharatiya-nyaya-sanhita-2023> (last visited Oct. 3, 2025).

dereliction of duty punishments. Although Section 103(2) of the BNS establishes new extreme penalties against attackers, it fails to specify how to deal with state complicity, permit civil actions against government agencies, and compel reporting to the administration. This is especially granting because the interference of politics and the laxity of local officials have often thwarted earlier prosecutions against hate crimes in India. Such academic literature, as well as Law Commission reports, demonstrates that the practicality of the laws against hate crimes depends not just on the prospects of severe penalties but on the extent to which the statutes articulate the active governmental responsibility, reporting requirements, whistle-blower clauses and independence in investigations. By not institutionalizing these mechanisms with new crimes and sanctions, the BNS continues the old crime of omission in India, in which the distance between what the state says it should do and how it actually functions in the field remains broad, and may encourage impunity in the future.¹⁰

Silent on Intersectionality: Gender, Sexuality, and Other Identities-

Although these hate-motives include: religion, caste, language, sex and community, the BNS does not go further to explicitly include gender identity, sexual orientation, or disability as a protected characteristic. The legal quietness exposes LGBTQ+ and disabled individuals to purposeful violence, which is especially concerning in the light of mounting evidence (both media-based and empirical studies) of hate-based violence against marginalized gender identities and most troubling is that most of these attacks occur at the intersection of multiple vulnerabilities (as the case of a Dalit transgender woman). New developments have not translated into direct coverage of hate crime law. Conversely, intersectional explicit statutory protection is explicitly granted in legal regimes in South African, in section of Europe and some US states, supported by compulsory disaggregated statistics on hate crime and disaggregated victim supported policies. Intersectional theorists and comparative law legal academics stress that this type of legal recognition is not symbolic: it gives a base to strong advocacy, specialized implementation, and reform in the future. Additionally, the silence of the BNS also implies that a large portion of community data, policy interest, and funding will continue to be biased, and this will continue to propagate existing hierarchies of vulnerability and invisibility.¹¹

¹⁰ Renjith Thomas, *Bharatiya Nyaya Sanhita, 2023: A Critical Perspective* (Apr. 12, 2024), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4898463.

¹¹ *Reforming the Indian Penal Code: Insights into Bharatiya Nyaya Sanhita, 2023*, LexisNexis (Jan. 15, 2025), <https://www.lexisnexis.in/blogs/bharatiya-nyaya-sanhita-2023/>.

No Victim Compensation or Community Repair Mechanisms-

The consequences of lynching and hate crimes do not stop with the victim, but permeate through families and communities and even the foundation of civil trust. Although the state laws in Rajasthan and West Bengal do offer state- compensated and, in some exceptional cases, state- funded psychological counselling to the survivors, the BNS says not a word about victim friendly reparations or state-funded trauma treatment and legal assistance. This lack is not an oversight (technical) but a significant lost chance to use up the psycho-social destruction that the collective violence causes. Scholarship on comparative victimology and Indian scholarship on victimology both emphasize that social healing and legal legitimacy are dependent on processes where suffering is recognized and collective repair is achieved, comprising of community- engagement plans, symbolic gestures and apologies by the state. In their absence, even the best- crafted penal will become powerless in the minds of those they intend to safeguard, they risk rejection and may even cause greater divisions between communities. The practices of restorative and reparative justice which are now central to international policy on hate crimes may be able to find a place in India, supplementing the panchayat and ADR traditions, and provide a local way of reconciliation as well as responsibility. Victims will be marginalized twice until there are mechanisms inscribed in law that will marginalize them first, by the violence, then by a system that is purely retributive.¹²

Drawing on International and Comparative Experience-

The majority of the existing international best practices in anti-hate laws acknowledge that criminalization is not sufficient and multi-layered responses, including but not restricted to education, data collection, support of victims, and community engagement, lead to long-term change. An example is the 2022 Prevention and Combating of Hate Crimes and Hate Speech Act in South Africa which requires government data collection and annual reporting. The hate crime system in the UK establishes professional guidelines and specialist hate-crime prosecutors, and New Zealand and other Scandinavian jurisdictions have regular restorative justice forums that give a voice to individuals and communities. These international approaches do not only offer a wider lens of enforcement, but also offer the models of applying the Indian own traditions, for example the panchayat, to the contemporary practice of restorative justice. By relying on these

¹² Aryan Gupta, *Mob Lynching under BNS: Provisions, Comparison and Important Cases*, NyayaNishtha, <https://nyayanishtha.com/article/mob-lynching-under-bns-provisions-comparision-and-important-cases>.

frameworks, researchers state that the further reforms in India should be based on going beyond statutory innovation to the thickening of institutional detail, in essence to incorporating administrative, educational, and collaborative institutions at each level of enforcement, starting with training police personnel and ending with community consultation. Only in such a way, the ideals proclaimed in the BNS will change their legislative aspiration to the social reality of life.¹³

THE TEHSEEN POONAWALLA CASE

Mob lynching has managed to be highlighted especially through judicial activism. A similar case of *Tehseen S. Poonawalla v. Union of India*¹⁴, the Supreme Court expressed its unreserved disapproval of mob violence, stating that “no citizen or the group can do justice in his own way” and cautioned that unregulated lynching may become the new order. The Court gave far-reaching directions:

- Automatic FIRs are registered under the provisions of hate speeches.
- Designation of nodal police officers in every district.
- Establishment of fast-track courts to address the cases of lynching promptly.
- Tough responsibility about the unfaithfulness of the public officials.
- Victim payback arrangements.¹⁵

Although not a law, those directives established national norms of procedural and corrective actions some of which shaped the contours of the BNS.

Limitations and Gaps:

Nevertheless, being innovative, the BNS falls short of defining mob lynching as the so-called hate crime and implementing all precautionary and rehabilitative solutions and practices that are stipulated by the Supreme Court. The new law criminalizes murder and grievous hurt made possible with a group intent, however, fails to give a detailed framework of punitive crimes that involve hate since hate crimes are never remedied using penal actions alone rather than giving a comprehensive direction as was observed by the scholars of law and civil groups.^{16 17}

¹³ Dipshreeya Das & Denkila Bhutia, Justice Deferred? Transgender Protections and the Bharatiya Nyaya Sanhita, 11 *Int'l J. Envl. Sci.* 69, 69–80 (2025), <https://doi.org/10.64252/49yfdb03>.

¹⁴ *Tehseen S. Poonawalla v. Union of India*, (2018) 9 SCC 501 (India).

¹⁵ *Mob Lynching*, Drishti IAS (Feb. 18, 2025),

<https://www.drishtiias.com/daily-updates/daily-news-analysis/mob-lynching-9>.

¹⁶ Malobika Sen, Calpurnia's Dream: The Menace of Mob Lynching in India, *Oxford Hum. Rts. Hub* (Aug. 8, 2024), <https://ohrh.law.ox.ac.uk/calpurnias-dream-the-menace-of-mob-lynching-in-india/> (archived Aug. 8, 2024).

An emerging body of scholarly opinion is that powerful anti-mob violence laws may be dual-edged swords: they are meant to safeguard those who are vulnerable, but may also be used by dominant groups or political actors to attack those who disagree or score unrelated points. The application of statutes of public order against protestors, Dalits, or tribal activities in India is not a new phenomenon, and the general wording of the BNS (including hydrogenation hate) raises the risk of such laws, in the absence of procedural safeguards, being applied selectively. The absence of legal minimums to independent investigation, prosecutor supervision, or appellate examination of the results of hate crimes may replicate the tendencies in communal riot and sedition cases: short-circuiting of the procedure, antagonistic witnesses, and selective enforcement. The reforms suggested by international scholarship, including independent review boards, community legal monitors and vigorous judicial training, are seen as necessary conditions that must be put in place to guard against the abuse of statutory purpose by the courts. By not linking its novel crimes to strict due process, in this way, the BNS, therefore, signals the anxiety that the new phase of prosecuting hate crime will merely rebrand the old hierarchies with new juridical language.¹⁸

LEX MENTE LANDMARK CASES

1. Dadri Lynching (2015) and Jharkhand Lynching (2019)

Although they were not the cases of Supreme Court but rather the cases of trials and incidents reported by the news, they play utmost role in relation to the topic of the project. The case of the Mohammad Akhlaq and Tabrez Ansari put the social and societal mind on fire with regard to the necessity of the breaking of mob lynching against the minority communities due to their behaviours, either real or perceived (such as eating beef¹⁹ or stealing allegations). These events brought to the common knowledge to the fact that the IPC did not set any particular requirements to penalize group atrocities fuelled by hate or bias, thus, enabling perpetrators receive sentences lesser than other rioting or run-of-the-mill murder crimes. These instances constituted both the empirical and discursive context, with the help of which the legislative innovations by BNS are supported. The publicity and controversy generated by these cases also played an important role

¹⁷ Feeza Vasudeva-Barkdull, Articulating Lynching in India, 38 *Int'l J. Pol. Culture & Soc'y* 111 (2025), <https://doi.org/10.1007/s10767-024-09501-5>.

¹⁸ Ali & Mukhopadhyay, *supra* note 5.

¹⁹ *Mob Kills Man Over Rumours He Ate Beef*, *The Hindu* (India), Sept. 29, 2015.

in India taking steps towards the explicit criminalization of mob-based hate violence on the new legal policy.²⁰ ²¹

2. Palghar Lynching (2020)

The Palghar lynching, the lynching of two Hindu ascetics and their driver by a mob responding to rumours of kidnapping, demonstrates that mob justice is not only facilitated by rumour-mongering and social hatred, but also has little to do with substantiated facts or the sense of what is reasonable. This case links to my project topic as it showed that the functionality of former law was pathetically inadequate to pursue the issue of violence committed by groups on a social or moral pretext. It emphasized the special risks presented by groupthink, rumour and vigilantism, practices that the BNS now responds to by creating aggravated versions of murder and grievous hurt where they are committed by mobs intentionally discriminating against their victims. In this way, the Palghar case serves as an example and as a rationale of BNS new provisions.²²

ANALYTICAL INSIGHTS: MOB LYNCHING AS HATE CRIME

There is much scholarly debate on the need to define mob lynching as a hate crime since in most instances, mob lynching focuses on religious, caste-based, or ideological bias and not criminal interests. Hate crime is variable in that they all reflect collective animus which is a threat to the health of pluralistic societies. The formulation by the BNS, though pathbreaking, does not cover hate-speech, rumour-mongering and indirect incitement although they form part of contemporary lynching events.²³

Also, the international best practice review reveals that effective anti-lynching legislation, in addition to criminalization, features affirmative responsibilities of states- prevention, observation, protection of victims and community awareness. Since Article 21 of the Indian Constitution guarantees the right of life, failure to check the occurrence of hate crimes repeatedly flaunts this right in the face with the necessity of both law and spirit of enforcement.²⁴

CONCLUSION

Bharatiya Nyaya Sanhita is an epochal step in the Indian legal campaign against group violence. Its provisions having certain specifications on mob lynching with increased punishments and

²⁰ Tabrez Ansari: *The Story So Far*, *Indian Express* (India), June 25, 2019.

²¹ Rajiv Raheja, *Mob Lynching in India: An Alarming Trend and Legal Framework*, *Legal Eagle Elite* (India), Mar. 8, 2025, <https://legaleagleweb.com/articalsdetail.aspx?newsid=77>.

²² Zeeshan Sheikh, *Palghar Lynching: All You Need to Know*, *Indian Express* (India), Apr. 20, 2020 (archived).

²³ Sen, *supra* note 16.

²⁴ *Id.*

seeking particular acceptance of hate-based motives is a significant move forward when compared to the Indian Penal Code. Nevertheless, there are remaining gaps- the obscurity in how hate crimes are defined, treated and no sufficient preventive measures lie on the same level as the procedural measures which are outlined by the Supreme Court. In the future, the success of these reforms will be determined by whether or not they are enforced thoroughly, followed up in case-by-case judicial proceedings and legislated against due to changes in the manifestation of bigoted violence.

