FROM RUMOUR TO RETRIBUTION: MOB LYNCHING AND THE CRIMINAL LAW AFTER THE BHARATIYA NYAYA SANHITA, 2023

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ABSTRACT

Mob lynching, the killing of a person by a crowd acting outside the law, has long been prosecuted in India as an ordinary case of murder or rioting, even though its causes, its participants and its social effects differ from those of other violent crime. For more than a century and a half the Indian Penal Code, 1860 contained no offence of lynching as such, and in Tehseen S. Poonawalla v. Union of India (2018) the Supreme Court asked Parliament to consider creating a separate offence. The Bharatiya Nyaya Sanhita, 2023 responds by making group murder on specified discriminatory grounds a distinct offence under Section 103(2), with a companion provision on grievous hurt in Section 117(4). This article examines whether the new provisions meet the concerns that led to the demand for reform. It traces the earlier legal position and the judicial directions of 2018, analyses the elements of the new offences, and evaluates them against the realities of lynching in India, including rumour-driven violence spread through messaging platforms, the difficulty of identifying individual participants in a crowd, and the failure of local policing to prevent or investigate such incidents. It argues that the new provisions have real symbolic and doctrinal value, but that their reliance on a list of discriminatory grounds, the five-person threshold and the absence of any provision on the liability of negligent officials leave important forms of mob violence outside their clearest reach. It further argues that, on its text, the penalty for the new offence matches that for ordinary murder, so that the practical gains of the reform depend less on punishment than on prevention, prompt registration and investigation, reliable evidence including digital video, compensation and witness protection. The article compares the Indian provisions with the federal antilynching statute enacted in the United States in 2022 and concludes with recommendations for legislators, police, courts and prosecutors. The analysis is doctrinal and rests on statutes, judicial decisions and secondary literature.

Keywords: mob lynching; Bharatiya Nyaya Sanhita; Section 103(2); collective violence; criminal justice; India

I. Introduction

A crowd gathers on a village road or a city street. Someone has been accused of stealing, of carrying beef, of kidnapping a child, or of crossing a boundary of caste or religion. Within minutes the accusation becomes a verdict, and the person is beaten to death. Those who take part are rarely strangers to one another or to the victim; many are neighbours, and many will later say that they only watched. The police arrive late, a video circulates on a messaging platform, and the question that follows is always the same: who is to be held responsible, and for what?

This is the problem of mob lynching. In India it has been a matter of public concern for several years, and it has been addressed by the Supreme Court, by a few State legislatures and, most recently, by Parliament. Until the enactment of the Bharatiya Nyaya Sanhita, 2023 (BNS), the Indian Penal Code, 1860 (IPC) contained no offence of lynching as such. Courts and prosecutors relied on the general provisions on murder, grievous hurt, unlawful assembly and rioting, which were drafted in the nineteenth century for a different kind of violence.[1]

The BNS changes this position in two ways. Section 103(2) makes it an offence for a group of five or more persons, acting in concert, to commit murder on the ground of race, caste or community, sex, place of birth, language, personal belief or any other similar ground. Section 117(4) creates a parallel offence for grievous hurt caused by such a group.[2] The change responds to a direction of the Supreme Court in *Tehseen S. Poonawalla v. Union of India*, which asked Parliament to consider a separate offence and to prescribe adequate punishment.[3]

The reform raises a question that this article seeks to answer. Does the new offence reach the kinds of mob violence that have in fact occurred in India, and will it make convictions more likely and violence less frequent? The answer offered here is a cautious one. The provisions have real value, because they name the wrong, attach liability to every member of the group and signal that the State treats such violence as a distinct harm. But they also have limits. They depend on the presence of a discriminatory ground, they are silent on the responsibility of officials who fail to prevent or investigate violence, and they leave untouched the practical

[1]Bharatiya Nyaya Sanhita, 2023 (Act 45 of 2023), brought into force on 1 July 2024, replacing the Indian Penal Code, 1860.
[2]Bharatiya Nyaya Sanhita, 2023, ss. 103(2), 117(4).
[3]*Tehseen S. Poonawalla v. Union of India*, (2018) 9 SCC 501.

obstacles of identifying participants, obtaining reliable evidence and protecting witnesses. A new offence is a necessary step, but it is not by itself a solution.

The method is doctrinal. The article studies the text of the new provisions, the earlier law and the directions given by the Supreme Court, and it considers the criminological literature on collective violence to explain why the problem resists ordinary criminal procedure. A short comparative note looks at the federal antilynching law enacted in the United States in 2022. The BNS is recent, and the number of reported decisions applying Section 103(2) is small, so the analysis is necessarily provisional. Part II explains the nature and causes of mob lynching. Part III describes the position before the BNS. Part IV analyses the new offences. Part V identifies gaps and difficulties. Part VI considers prevention, investigation and victim support. Part VII offers a comparative note, Part VIII makes recommendations, and Part IX concludes.

II. Understanding Mob Lynching

A. Meaning and features

There is no single settled definition of lynching, but its core features are widely accepted. It is a killing or serious assault carried out by a group, outside the process of law, in the name of punishing a supposed wrong or enforcing a supposed norm. Three features distinguish it from other violent crime. The first is collective action: the act is committed by a number of persons, few of whom may have planned it in advance. The second is a claim of legitimacy: participants typically believe, or say they believe, that the victim deserved punishment and that the State cannot be trusted to inflict it. The third is a public character: the violence is often committed openly, sometimes before a large crowd and sometimes before the police, and it is often recorded and circulated.

These features make lynching different from a murder committed by a few persons in a private quarrel. The harm extends beyond the victim to the community to which he or she belongs, which is warned that its members may be attacked with impunity. For this reason the Supreme Court has described mob violence as a threat to the rule of law and to the equal protection of persons, and it has said that the State bears a positive duty to prevent it.[4]

[4] *Tehseen S. Poonawalla*, supra note 3.

B. Causes and triggers

Lynchings in India have followed several recurring patterns. Some have been linked to alleged cow slaughter or cattle transport and have targeted persons identified with particular communities; indeed, the petitions that led to the 2018 decision arose from incidents of this kind. Others have been caused by rumours of child abduction or theft, which spread rapidly through messaging applications in 2018 and led to the killing of persons who were often outsiders, beggars or travellers and who had no connection with the alleged offence. Still others have arisen from caste hostility, from suspicion of inter-faith or inter-caste relationships, or from accusations of witchcraft. The occasions differ, but the structure is similar: an accusation, a crowd, and a violent response in which the usual checks of identification, inquiry and trial are absent.

Several conditions make such events possible. Social media allows unverified claims to reach large numbers of persons within minutes and gives rumours an air of authority through repetition. Public rhetoric that portrays certain groups as threats can lower the threshold of violence, and the Law Commission of India has noted the connection between hate speech and the creation of an atmosphere in which violence becomes thinkable.[5] Most important of all, a perception that offenders will not be punished, and that the police will not intervene in time, encourages crowds to take the law into their own hands and reassures participants that the consequences will be slight.

C. Criminological perspectives

The older literature on crowds suggested that individuals in a mob lose their capacity for judgment and become subject to a kind of contagion.[6] This account has been criticised for treating crowds as irrational, and modern research stresses instead that participants act within shared beliefs and social identities. Two ideas from later work are especially helpful for understanding the legal problem. The first is diffusion of responsibility: where many persons are present, each is less likely to feel individually answerable, and bystanders are less likely to intervene.[7] The second is the concept of moral panic, in which a group or a practice is publicly

[5]Law Commission of India, Report No. 267, *Hate Speech* (2017).
[6]Gustave Le Bon, *The Crowd: A Study of the Popular Mind* (T. Fisher Unwin 1896).
[7]Bibb Latané & John M. Darley, *The Unresponsive Bystander: Why Doesn't He Help?* (Appleton-Century-Crofts 1970).

defined as a danger to society, and punitive action against its members comes to be seen as justified.[8]

These ideas matter to lawyers because they explain why lynching is difficult to prevent and prosecute. If each participant feels less responsible, and the community supports the violence or remains silent, then witnesses are reluctant to speak and the police are reluctant to act. A law that treats the event as an ordinary murder, to be proved against named individuals by eyewitness testimony, will often fail. The legal response must therefore deal with collective responsibility, with the protection of witnesses and with the role of officials who are present or responsible for the area.

III. The Position Before the Bharatiya Nyaya Sanhita

A. Prosecution under general provisions

Before 2024, a person who took part in a lynching was liable to be charged under the ordinary provisions of the IPC. A killing amounted to murder or culpable homicide, an assault to grievous hurt, and the participation of many persons could be brought within the provisions on common intention, unlawful assembly and rioting.[9] The doctrine of constructive liability meant that every member of an unlawful assembly was liable for an offence committed in pursuance of its common object, even if he had not personally inflicted the fatal injury.

In principle, therefore, the law was adequate to punish lynching. In practice, it often failed. The prosecution had to prove that the accused were members of the assembly, that they shared a common object and that the offence was committed in pursuance of it. Where the crowd was large and the witnesses few, the courts were cautious about convicting all those named. In a leading decision on rioting and group violence the Supreme Court emphasised that, where a large number of persons are accused, a conviction should ordinarily depend on credible identification of each accused by more than one witness.[10] This caution protects the innocent, but it also means that, where fear or community loyalty prevents witnesses from coming forward, convictions are difficult to obtain.

[8]Stanley Cohen, *Folk Devils and Moral Panics* (MacGibbon & Kee 1972).
[9]Indian Penal Code, 1860, ss. 34, 141, 146–149, 300–304, 320–326.
[10]*Masalti v. State of U.P.*, AIR 1965 SC 202.

The older law also did not mark the character of the violence. A lynching motivated by hostility to a community was prosecuted in the same way as a quarrel over land. Nothing in the statute recognised the additional harm caused to the community, or the connection between the violence and discrimination, and there was no express provision addressing the role of officials.

B. The Supreme Court's directions in 2018

In *Tehseen S. Poonawalla*, the Supreme Court dealt with petitions complaining of State inaction in the face of mob violence. The Court held that the State has a duty to protect citizens against such violence and that the failure to do so is a violation of the constitutional guarantee of life and equal protection. It issued directions of three kinds, described as preventive, remedial and punitive.[11]

The preventive measures included the appointment of a senior police officer as nodal officer in each district to take steps against mob violence, the identification of areas where such incidents had occurred, regular coordination with local intelligence, and action against the spread of provocative messages through social media. The remedial measures required prompt registration of a first information report, investigation by the nodal officer or a supervising officer, the framing of a compensation scheme for victims, and the designation of fast-track courts so that trials would proceed on a day-to-day basis and conclude expeditiously. The punitive measures provided that officials who failed to prevent an incident or to investigate it properly would face departmental action, in addition to any criminal proceedings. Finally, the Court observed that Parliament should consider creating a separate offence of lynching with adequate punishment.

The decision is important for two reasons. It identified lynching as a distinct problem that requires a distinct response, and it placed responsibility not only on the participants but on the State machinery. As later parts of this article show, the second of these ideas has not been carried into the BNS.

The Court had adopted a similar approach in a case concerning honour-based violence, where it laid down preventive, remedial and punitive measures to be taken by the State.[12] The common thread is that where private violence is organised and recurrent, and where the State has been

[11] *Tehseen S. Poonawalla*, supra note 3.
[12] *Shakti Vahini v. Union of India*, (2018) 7 SCC 192.

slow to respond, the courts will require systemic measures and not only the prosecution of individual offenders.

C. Legislative responses

The call for a specific law was taken up in some States before Parliament acted. Manipur enacted a statute on the prevention of mob violence in 2018, and a Bill on protection from lynching was passed by the Rajasthan Legislative Assembly in 2019.[13] These measures differed in their detail, but they shared a concern with defining the offence, imposing graded penalties and creating duties for officials. At the national level, private members' Bills were introduced from time to time but did not become law. The BNS was thus the first occasion on which the Union Parliament enacted a provision specifically on the subject.

IV. The New Offences under the Bharatiya Nyaya Sanhita

A. Section 103(2): the text and its elements

Section 103(1) of the BNS retains the offence of murder and prescribes death or imprisonment for life, together with a fine. Section 103(2) then provides that where a group of five or more persons acting in concert commits murder on the ground of race, caste or community, sex, place of birth, language, personal belief or any other similar ground, each member of the group shall be guilty of murder and shall be punished with death or with imprisonment for life, and shall also be liable to fine.[14] Four elements must therefore be established: a group of at least five persons; action in concert; a killing that amounts to murder; and a discriminatory ground for the act.

Each element deserves comment. The numerical threshold of five reflects the traditional definition of an unlawful assembly and responds to the sense that lynching is a crowd offence. It also excludes smaller groups, so that the killing of a person by three or four assailants on the same discriminatory ground would fall under the ordinary provision on murder, although the social harm may be identical. The requirement that the group act in concert is meant to distinguish a group with a shared purpose from a collection of individuals who happen to be present. It is closer to the doctrine of common intention than to mere presence, and it will have

[13]The Manipur Protection from Mob Violence Act, 2018; the Rajasthan Protection from Lynching Bill, 2019.
[14]Bharatiya Nyaya Sanhita, 2023, s. 103(1)–(2).

to be proved by evidence of conduct, such as joint pursuit, coordinated blows or encouragement.[15]

The third element requires that the killing amount to murder. This means that the prosecution must prove the mental state required for murder, namely an intention to cause death or bodily injury sufficient in the ordinary course of nature to cause death, or one of the other mental states recognised by the Sanhita. If the participants intended only to cause hurt and death resulted unexpectedly, the offence may be one of culpable homicide not amounting to murder, and the aggravated provision would not apply. Courts have generally taken the view that, in group violence, the question of individual intention has to be examined carefully and cannot be assumed from membership of the group alone.

The fourth element, the discriminatory ground, is the one that gives the offence its distinct character. The list of grounds, race, caste or community, sex, place of birth, language and personal belief, resembles the grounds on which Article 15 of the Constitution prohibits discrimination, with the addition of personal belief and the open-ended expression "any other similar ground". The phrase is likely to be read in the light of the specified grounds, which means that the ground must be of the nature of a group identity or belief and not merely a personal grievance.

B. The significance of the provision

On its text, the punishment prescribed by Section 103(2) is the same as that for murder under Section 103(1). The offence is not punished more severely than murder. Its significance therefore lies elsewhere. First, it gives legal recognition to the idea that group violence on discriminatory grounds is a distinct wrong. A conviction under the section will record not merely that a person was killed but that he was killed because of who or what he was, and by a group. This expressive function is not trivial in a system in which the nature of the violence has often been denied or minimised.

Second, the section makes each member of the group guilty of murder. Under the earlier law, liability for the acts of others depended on proving common intention or common object and on connecting the accused with the assembly. The new provision does not remove the need to

[15]Bharatiya Nyaya Sanhita, 2023, s. 3(5) (liability for acts done by several persons in furtherance of common intention).

prove membership of the group and action in concert, but it gives prosecutors a direct and specific charge and a statutory description of the conduct that is punishable. It may help to avoid the technical arguments about the distinction between common intention and common object which have long complicated trials of group offences.

Third, the section sends a message to potential participants and to officials. The inclusion of the offence in the statute puts on record that Parliament regards lynching as a serious crime. Whether this message will be effective depends on enforcement, which is discussed below.

C. Section 117(4): grievous hurt by a group

Section 117(4) creates a corresponding offence where grievous hurt is caused by a group of five or more persons acting in concert on the same grounds. Each member of the group is guilty of voluntarily causing grievous hurt and is liable to imprisonment of either description which may extend to seven years, and to fine.[16] The provision is significant because many lynching attempts do not end in death. Victims survive with serious injuries, often because of the arrival of the police or the intervention of bystanders, and the earlier law treated these cases as ordinary assaults. The new provision gives some recognition to this large class of cases.

The maximum punishment of seven years is, however, modest when compared with the gravity of a group attack that stops short of death. A victim who is left permanently disabled by a mob may find that the offender can be punished with a term that is not much greater than that for a serious individual assault. The legislature may wish to reconsider whether graded penalties, based on the nature of the injury, would better reflect the seriousness of the conduct.

D. Relationship with other provisions

The new offences operate alongside, and do not replace, other provisions. The general provisions on common intention, unlawful assembly and rioting continue to apply and may be used in addition to, or in the alternative to, the specific provisions.[17] This is a sensible arrangement because the prosecution may not be able to prove the discriminatory ground, or the numerical threshold, in every case. It is important that charging decisions are made with care, and that the specific provision is not used to the exclusion of the general ones where the

[16]Bharatiya Nyaya Sanhita, 2023, s. 117(4).
[17]Bharatiya Nyaya Sanhita, 2023, ss. 189–191 (unlawful assembly, liability of members and rioting).

evidence supports only the latter. Where the victim belongs to a Scheduled Caste or Scheduled Tribe and the violence is based on that identity, the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 may also apply, with its own provisions on procedure, special courts and victim support.

V. Gaps and Difficulties

A. The limits of the discriminatory ground

The most important limitation of Section 103(2) is that it depends on a discriminatory ground. Many lynchings in India have been driven by rumour, and the victims have been persons accused of theft, kidnapping or witchcraft, who were attacked not because of membership of a protected group but because of a belief that they had committed a wrong. The incidents of 2018, in which persons suspected of child abduction were killed by crowds in several States, are examples. The victims were often outsiders, but it is not obvious that they were killed on the ground of place of birth or community, and a court may find it difficult to apply the section to such cases.

If the section is read narrowly, these cases will fall back on the ordinary provision on murder and the general provisions on group liability. This is not a disaster, because the punishment is the same, but it means that the offence does not capture one of the most common forms of mob violence. If it is read broadly, so that "any other similar ground" includes any belief or suspicion that defines the victim as an outsider or a wrongdoer, the distinction between the aggravated and the ordinary offence is weakened. The better course may be for Parliament to consider whether the harm of mob violence lies in the group character of the act and the usurpation of the function of the courts, and not only in the discriminatory motive. A definition focused on the collective punishment of a supposed wrongdoer, with discriminatory motive as an aggravating factor, would cover a wider range of cases.

B. Identification of participants

The second difficulty is practical. In a crowd of many persons, few can be identified, and those who can are often afraid to testify. The courts have long insisted that persons should not be convicted merely because they were present in a crowd.[18] The BNS does not change this

[18] *Masalti v. State of U.P.*, supra note 10.

requirement, because it still requires proof that each accused was a member of the group and acted in concert. The result is that the new provision may in practice be applied to a few persons whose role can be proved, while many of the participants escape.

Evidence of identification will therefore be central. Video recordings, mobile phone location data, call records and messages can supplement eyewitness testimony. Investigators should be trained to collect such material quickly, to preserve it in a manner that meets the standards of admissibility, and to use it to identify participants and to establish their roles. Test identification parades, photographic identification and the recognition of voices may also be used, but each has limits, and all depend on the integrity of the investigation.

C. The accountability of officials

The 2018 directions treated the failure of officials as a central part of the problem. The Court said that officials who fail to prevent mob violence, or who neglect to investigate it properly, should face consequences. The BNS contains no corresponding provision. The general offences relating to public servants who disobey the law or the directions of the law remain available, but they were not designed for the failure to prevent mob violence and they require proof of particular states of mind.

The omission is significant. In many cases of lynching, the police were present or were informed in advance. Their inaction, whether from fear, sympathy or indifference, allowed the violence to occur. A provision that created liability for officials who knowingly or negligently fail to take reasonable steps to prevent or to stop mob violence within their jurisdiction, with appropriate safeguards against vexatious prosecution, would address a major cause of the problem. The requirement of sanction for prosecuting public servants, which operates as a filter in many cases, would also need to be considered, so that it does not become a barrier to accountability.

D. Digital evidence and viral videos

A distinctive feature of contemporary lynching is that it is often recorded, sometimes by participants who regard the act as justified. Such videos are valuable evidence, but their use raises issues of authenticity and admissibility. A recording that is circulated on a messaging platform may be a copy of a copy, edited or compressed, and its origin may be unknown. Under

the Bharatiya Sakshya Adhiniyam, 2023, an electronic record is admissible as a document if the conditions of Section 63 are met, and the party who relies on a copy must ordinarily produce a certificate in the prescribed form, signed by the person in charge of the device and by an expert, and recording the hash value of the record.[19]

These requirements are difficult to meet where the recording was made by a bystander who cannot be traced or who is unwilling to cooperate. In such cases, the prosecution will need to rely on the original device where it can be recovered, on forensic recovery from the phones of participants, and on other evidence that can establish the authenticity of the recording. The courts will have to decide how the certificate requirement is to be applied where the person in charge of the device is unknown. A rigid approach could result in the exclusion of reliable evidence in the very cases in which the evidence of identity is most needed. The Supreme Court has recognised, in the context of the earlier law, that the requirement cannot be insisted on where compliance is impossible, and this principle should be extended with care to the new provision.[20]

E. The absence of data

A final problem is the lack of reliable national data. Official statements have indicated that national crime statistics do not maintain a separate category for lynching, and independent compilations by researchers and journalists differ in their definitions and their results. Without consistent data on the number of incidents, the number of arrests and convictions, and the time taken to conclude trials, it is difficult to assess whether the reform is working. The 2018 directions required States to report on compliance, but there is little public information about the extent of compliance. Reliable data is not a luxury; it is a condition of accountability.

VI. Beyond Penal Law: Prevention, Investigation and Victim Support

A criminal offence acts only after violence has occurred. Since the central difficulty in lynching is that the violence is sudden and the State is often absent, the effectiveness of the reform depends on measures that operate before, during and after the event.

[19]Bharatiya Sakshya Adhiniyam, 2023, s. 63.
[20]*Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal*, (2020) 7 SCC 1.

A. Prevention

Prevention depends on intelligence, on communication and on the readiness of the local police. The nodal officers appointed under the 2018 directions were intended to coordinate these tasks, but their effectiveness has depended on the commitment of the State. Effective prevention requires monitoring of rumours that circulate in an area, rapid public clarification by the authorities when a false claim is spreading, and a capacity to deploy personnel to a tense location in time. It also requires engagement with messaging platforms, so that content that incites violence can be identified and removed, and so that information that helps to trace those who start and spread dangerous rumours can be obtained lawfully and quickly. Public education on the dangers of forwarding unverified messages is likewise important, particularly in areas where internet use is recent and where trust in unverified information is high.

B. Registration and investigation

Prompt registration of the first information report is the foundation of every prosecution. The Supreme Court has held that registration is mandatory where the information discloses a cognizable offence.[21] The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) provides for the registration of information by electronic communication and for the registration of a first information report irrespective of the area in which the offence occurred.[22] These provisions are valuable in lynching cases, where victims and their families may be afraid to approach the local police. The BNSS also requires, for serious offences, the visit of a forensic expert to the scene to collect evidence, and the recording of the process by audio-video means.[23] If these provisions are faithfully implemented, they should improve the quality of evidence in lynching cases. They should also reduce the room for disputes about what was found at the scene, and about how it was collected.

The investigation should be supervised by an officer who is senior enough to resist local pressure, and who is not connected with the police station whose conduct may be in question. Where there is a suggestion that local police failed to act, the inquiry into their conduct should be separate from, but should proceed in parallel with, the investigation of the crime.

[21] *Lalita Kumari v. Govt. of U.P.*, (2014) 2 SCC 1.
[22] Bharatiya Nagarik Suraksha Sanhita, 2023 (Act 46 of 2023), s. 173.
[23] Bharatiya Nagarik Suraksha Sanhita, 2023, s. 176(3).

C. Compensation and support for victims

Victims of lynching, and the families of those killed, often suffer a loss of livelihood in addition to physical injury and bereavement, and they may be forced to leave their homes. The BNSS requires every State to prepare a scheme for compensation to victims of crime and their dependants, and empowers courts to recommend compensation where the accused is acquitted or discharged but the victim has to be rehabilitated.[24] The 2018 directions required the State to pay compensation within a short period, and without waiting for the outcome of the trial. In practice, the extent and promptness of compensation have varied considerably. A uniform national standard for compensation in lynching cases, calculated according to the nature of the harm and linked to the cost of living, would reduce this variation and would recognise the duty of the State that failed to protect the victim.

D. Witness protection

Witnesses to a lynching are usually members of the same community as the accused, or live in the same village, and they face real risks if they testify. The Supreme Court has approved a Witness Protection Scheme and has directed that it be treated as law until Parliament legislates.[25] The scheme provides for the assessment of the threat to a witness and for measures ranging from police escort to relocation. Its use in lynching cases should be routine. Courts should be ready to take measures to protect witnesses at trial, including testimony by video link where appropriate, and should deal firmly with intimidation. An earlier decision of the Court, which criticised the failure of the trial in a major communal violence case to protect witnesses, remains an important reminder of what can go wrong when witnesses are not protected.[26]

E. Speedy trial

A long delay between the offence and the verdict weakens the deterrent effect of the law, causes witnesses to lose their memory or their resolve, and prolongs the suffering of victims. The 2018 directions for fast-track courts and day-to-day trial have not always been followed. Designation of special courts, supported by dedicated prosecutors with training in crowd violence, and

[24]Bharatiya Nagarik Suraksha Sanhita, 2023, s. 396.
[25]*Mahender Chawla v. Union of India*, (2019) 14 SCC 615.
[26]*Zahira Habibulla H. Sheikh v. State of Gujarat*, (2004) 4 SCC 158.

adherence to timelines for the completion of investigation and trial, would improve the position.

VII. A Comparative Note

The history of lynching in other countries shows that a statute is not a complete answer, but it also shows that statutes can matter. In the United States, lynching was for a long time a mechanism of racial terror, and repeated efforts to enact a federal offence failed for decades. The Emmett Till Antilynching Act, enacted in 2022, finally made lynching a distinct federal crime by amending the federal hate crime provisions, and it provides for enhanced penalties where a conspiracy to commit a hate crime results in death or serious injury.[27] The long delay in its enactment is a reminder of the political resistance such measures can meet, and the Act's emphasis on conspiracy reflects an understanding that the planning and encouragement of violence, and not merely its execution, should be punished.

Two lessons may be drawn for India. First, the American statute focuses on the conspiracy and the act of violence, and does not make the existence of a specific list of discriminatory grounds the only route to liability. Second, a federal system faces problems of local enforcement that are comparable to those in India, where the police are a State subject and where local pressures may affect the investigation. In both systems, a national offence has to be supported by oversight and by the willingness of authorities to prosecute. The comparison is of limited use because the social history and the legal systems differ, but it supports the argument that the emphasis should be on enforcement and on the responsibility of the State, rather than on the creation of the offence alone.

VIII. Recommendations

The analysis suggests six measures. First, Parliament should consider amending Section 103(2) so that it covers group killings carried out in the name of punishing a supposed wrongdoer, as well as those motivated by discriminatory grounds, treating the latter as an aggravating factor. This would bring rumour-driven lynchings within the specific provision and would avoid the difficulty of proving a particular ground in every case. In the meantime, courts should interpret

[27]Emmett Till Antilynching Act, Pub. L. No. 117-107 (2022).

the expression "any other similar ground" purposively, in keeping with the object of the provision.

Second, Parliament should consider a provision on the criminal and disciplinary responsibility of public servants who knowingly or with gross negligence fail to prevent or investigate mob violence, subject to safeguards against abuse. The measure would carry forward the principle of official accountability laid down in 2018 and give it statutory force.

Third, the penalty for grievous hurt by a group under Section 117(4) should be reviewed, and a graded scheme considered, so that group attacks causing permanent disability or life-threatening injury are punished in proportion to their gravity.

Fourth, State governments and the police should adopt standard operating procedures for lynching cases, including immediate registration of the first information report, supervision by a senior officer, early forensic examination of the scene, preservation of digital recordings with proper hash values, and a written chain of custody. Training should be provided to officers on the collection of digital evidence from bystanders and from the phones of suspects, and on compliance with the certificate requirements of the Bharatiya Sakshya Adhiniyam, 2023.

Fifth, the compensation schemes of the States should be harmonised and linked to a minimum national standard, with payment within a fixed time. Witness protection should be made routine in cases of mob violence, and courts should record reasons where they decline an application for protection.

Sixth, the National Crime Records Bureau, or another competent authority, should collect and publish annual data on lynching, with consistent definitions, covering the number of incidents, registration of cases, arrests, charge-sheets, convictions and the time taken for trial. Such data would enable courts, legislators and researchers to assess whether the reform is effective.

IX. Conclusion

The introduction of a specific offence of group killing on discriminatory grounds is a significant moment in the development of Indian criminal law. It answers a request of the Supreme Court, recognises a distinct harm and gives prosecutors a clear charge. But the offence is only one element of what is needed. It is limited by its dependence on a list of grounds, by

its silence on the responsibility of officials, and by the practical problems of identifying participants and protecting witnesses.

The history of lynching shows that violence of this kind flourishes where the State is absent or complicit, where communities feel that they will not be held answerable, and where rumours travel faster than the law. The remedy therefore lies in the whole system of criminal justice: in prevention that anticipates violence, in policing that responds, in investigation that collects reliable evidence, in courts that try cases quickly and protect witnesses, and in a State that compensates victims and holds its own officers to account. If these measures are taken, Section 103(2) can be a useful instrument. If they are not, it will risk becoming another provision that expresses the right principle and is rarely applied.