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Law, Lynching, and the Limits of Statutory Reform: An Empirical-Critical Analysis of BNS

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Abstract

This article performs a critical legal exploration of the Bharatiya Nyaya Sanhita (BNS) 2023, with a particular emphasis on Sections 103(2) and 117(4) which comprises of India's first attempt to recognize and respond to mob based violence via statute. They seek to provide aggravated offences of murder and grievous hurt in circumstances where the crime is arranged in a group. It thereby recognises a pathway of legal rationale to deal with lynch-like crimes. This analysis shows that even though there is an innovative structure, the law still suffers from definitional uncertainty, identity-based specificity and procedural deficiency. This study draws on both doctrinal interpretation and empirical perceptions to assess the strengths and weaknesses of BNS 2023 through public opinion, legal theory and rule of law perspectives. The article does not call for a new legal classification, but raises the question of adequacy of the existing one. It argues that without doctrinal clarity, institutional clarity and normative force, these provisions may result in symbolic formalism, sans substantive change. The article concludes that BNS 2023, while a step forward reflects a need for deeper jurisprudential commitment to ensure that law can serve a dual role as deterrence and moral declaration against group-based violence.

Keywords: Law, Lynching, Limits, Statutory Reform, Critical Analysis, BNS

Introduction

In the past few years, there has been a disturbing increase in group based violence visible through public beatings, ritualized murders and mob-based punishment. These occurrences, known as lynching, have received national and global attention for their violent character and social meaning^[2]. The violent acts are multifactorial with identity-based targeting, communal conceptions of justice and institutional inertia. For decades the Indian Penal Code (IPC)^[3], which is structured on colonial guidelines, did not contain a substantive or procedural mechanism that recognized the special nature of collective crime of lynching. The Bharatiya Nyaya Sanhita (BNS) 2023 has begun a structural renovation of India's criminal justice system. In particular, two provisions: Section 103(2), increasing the punishment for group-based murder when motivated by identity and Section 117(4), covering group-based grievous hurt. While these two provisions signify the

state's first explicit statutory recognition of identity-based aggravation into the foundation of criminal liability for group-based violence, they reference a relatively vague term. Nevertheless, one must simultaneously question whether this shift in legal recognition is sufficient. This paper observes that structurally these developments remain ambiguous in several respects like in the absence of a clear doctrinal definition of mob-based crime. There is also not a clear and established procedure in law that is specific to mob-violence. Even though the legal language has been improved, the Act does not currently define any procedural arrangements around burden of proof or identification. The Act fails to establish an independent mechanism concerning the applicability of evidence to demonstrate collective intent. Additionally, the Act as a legislative text offers no guidance relative to managing potential misuse of law. This article provides an extensive doctrinal and empirical evaluation of these aspects. The doctrinal assessment of

secondary texts in this paper is complemented by primary data from a public perception survey conducted by the researcher with a sample size of 240 respondents. In engaging with both the legislative text and public viewpoint, this article contributes to the broader discussion on the legal response to identity-based violence. The article puts forward an urgent legal question if the legal atmosphere of India is effectively responding to the environment of collective violence by forming new legislation and regaining its monopoly over justice.

Literature Review

Historically speaking, the IPC provided no specific section dealing with lynching. Criminal offenses with multiple perpetrators have been addressed under general offenses, such as murder (Section 302), rioting (Section 147), and unlawful assembly (Section 149). However, these statutes do not explicitly characterize violence as lynching, while neglecting to capture the targeted, hate-focused nature and mob oriented violence that characterizes lynching behavior. This intentional vagueness left prosecutors in a tenuous position in terms of holding multiple offenders accountable and left systemic holes in addressing the structural conditions under which these acts of violence occurred. Differently from that, The BNS 2023 included two important new provisions that deal with violence related to lynching: Section 103(2) and Section 117(4). Section 103 (2) provides this crime with statutory existence and is an important step in the development of its jurisprudence in India. Nevertheless, the language of Section 103(2) was challenged when the Jharkhand High Court took suo motu cognisance of a typographical error in one of the most widely circulated editions of the BNS, which was published by Universal LexisNexis^[4].

The empirical source for understanding the implications of the BNS provisions and public perception thereof comes from the primary dataset collected as part of this study. For example, responses to questions: faith in the legal punishment, preference for strict/lenient legal punishment and the preference for law versus a crowd. These reveal important perspectives into the public's view of the efficacy, legitimacy and enforcement of law in cases of lynching. The implications of these findings helped to illuminate understanding of the deeper analysis of the crime. The literature base is purposely confined only to statutory, legal and primary data, consistent with the intention of providing an original legal-empirical assessment of the legislation.

Methodology

Research Objectives

1. To critically examine the substantive and procedural adequacy of Sections 103(2) and 117(4) of the BNS in addressing lynching-related violence.
2. To analyze public perceptions of punishment legitimacy, legal efficacy, and the law-crowd justice continuum.
3. To identify legal-empirical mismatches in how lynching is legislated versus how it is socially rationalized.

Research Questions

1. Do Sections 103(2) and 117(4) of the BNS meaningfully recognize the group-based, identity-

targeted nature of lynching?

2. Does the general public believe that stricter laws can effectively reduce such crimes?
3. What biases or assumptions influence public support for crowd-based punishment?

Research Design

This paper adopted a mixed-method research design, combining doctrinal legal analysis with primary empirical data interpretation. The legal component critically evaluated the statutory evolution from the Indian Penal Code (IPC), 1860 to the Bharatiya Nyaya Sanhita (BNS), 2023 (specifically focusing on Sections 103(2) and 117(4)). The empirical component drew from a structured survey conducted across various districts in India.

Sampling and Tools

The survey adopted a random snowball sampling technique, targeting individuals from diverse socio-economic, religious, and linguistic backgrounds. The total number of analyzed responses for this paper was 240. Data was collected through a pre-tested interview schedule, designed to obtain candid views on punishment philosophy, legal trust and normative choices between law and vigilantism. The following empirical questions were selected for analysis: question that gauges public trust in the effectiveness of strict legal punishment as a deterrent, that assesses public preference between formal legal mechanisms and alternative methods to curb lynching, that tests the moral threshold for public punishment in a case of proven violent crime, that examines justification for public violence based on caste-based intrusions, and the one that captures attitude towards punishment when tribal boundaries (caste, class, religion, etc.) are perceived to be violated.

Analysis

Empirical Analysis

Belief in Effect of Strict Law and Punishment on a Reduction in Crime

This question is directly related to answering how effective legal deterrence is. It is the premise of any legislative intervention aimed at mob violence, including lynching.

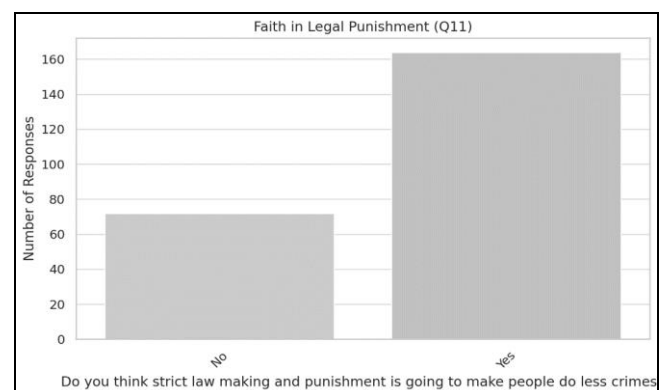


Fig 1: Faith in Legal Punishment

The respondents overwhelmingly indicated "Strongly Agree" to "Agree" when asked if strict laws and punishments help reduce crime, indicating a considerable

portion of the population believes, at least conceptually, in the deterrent nature of the legal system.

Interpretation: This belief supports the normative purpose of enacting provisions like Section 103(2) and 117(4) of the BNS which serve to increase sentencing for group-based identity crimes. But, the intensity of the belief in the law as a deterrent does not mean the belief extends to behavioral trust. This finding demonstrate a public desire for accountability which supports the principle of robust legal system. This section explains what emerged from the comparison of the effectiveness of the different tools that might be effective. It adds another layer in terms of how citizens envision effective intervention beyond laws that get tougher and more strictly enforced.

Overall, data shows that punitive legal responses are valued and accepted, but leans heavily to prevention and structural responses. The outcome of these questions suggests that there are coexisting legal and community responses, which means that respondents concede that lynching is more than a criminal act but also is a social process characterized by cultural attitudes, misinformation, and community bias.

Most Effective Way to Stop Lynching

This question offers an analysis of comparative perceptions, asking survey respondents to rank possible methods of preventing lynching.

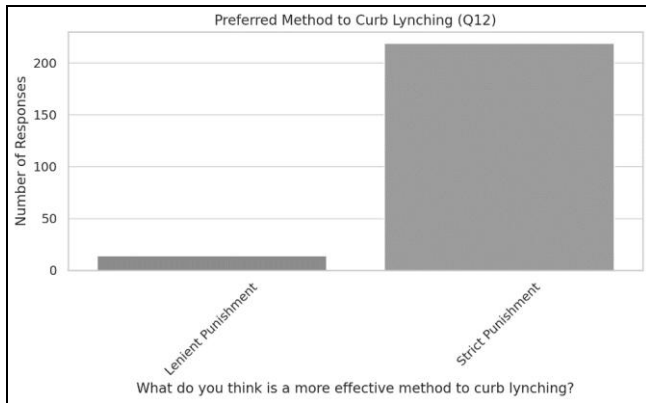


Fig 2: Effective method to curb Lynching

There are multiple and diverse categories reflected in the survey responses. A higher percentage marked penal legal consequences as the most effective way. A very high percentage marked community awareness and education as the most effective, along with various other suggestions for police reform and a speedy trial.

Interpretation: The data suggested that although punitive legal perspectives are important, preventive community-based strategies are also important to the public. That punitive legal and community insight coexist and are important to the public. The data also suggests that the emphasis of education and awareness for preventing violence stemming from hate leads the public to understand the legal developments more.

This finding has direct implications for policy design and extends support for a multi-pronged legal and institutional framework. Whereas Sections 103 and 117 of BNS

specifically address legal consequences, society expects more than enforcement. It expects laws to partner with preventative measures such as community initiatives, reformed school curriculum, police-community partnerships and digital literacy programs.

Justification of Violence

The respondents were tested on the scenarios 1) whether they would support public violence if the perpetrator was found guilty of raping a child, 2) whether public violence would be justified if a person of a different caste crashes, while attending a local religious gathering, 3) if violence was justified when a person crossed over invisible tribal boundaries of caste, religion or class.

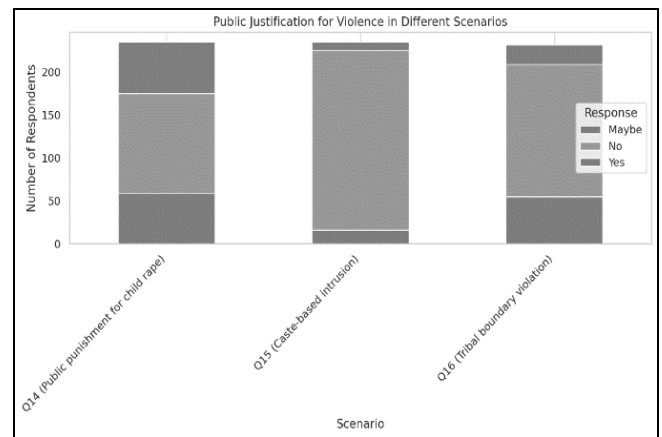


Fig 3: Justifications of Violence

The results were overwhelmingly positive, with “Strongly Agree” and “Agree” responses containing over 75% of the total response. Noticing a shift, “Agree” and “Strongly Agree” responses were less than 50% of the total response. Lastly, agreement to the scenario was still present but slightly lower. Responses with “Neutral” and “Disagree” increased in the last two scenarios, reflecting the growing hesitancy of individuals to justify violence.

The first question provided a moral benchmark for justifying violence. The overwhelming general support for public punishment reflects the deep-seated desire for revenge embedded in society, particularly crimes that are universally despised (child rape). It validates that for certain crime categories, legal punishment is viewed as inadequate. The second question taps into the caste and cultural nuance of the society. While fewer individuals explicitly justified violence, a significant number of individuals still tolerated violence as a response to crossing the boundaries of caste. This suggests a latent attitude of collective bias. The third scenario tests the broader requirement for tribal conformity and identity protection. While there remains a significant number of respondents who agree that violence is justified, the drop in agreement shows that as the context shifts to a more abstract collective, justification for violence is partially fragmented. This decreasing represents the fact that while the violation of group identity is meaningful and powerful, it does not have the same moral underpinning as what is considered a truly criminal act.

Mapping of these three scenarios gives a range of public justifications for violence. This arc of moral justification supports our understanding of how lynching can occupy

space within the public conscience. If the legal system is believed to be slow and ineffective, group-based justifications gain traction.

Doctrinal Analysis

Overview of Sections 103(2) and 117(4), Bharatiya Nyaya Sanhita, 2023

The Bharatiya Nyaya Sanhita, 2023 introduces a major shift in India's legal landscape by codifying group-based violence into explicit statutory language specifically through Sections 103(2) and 117(4). These provisions are the law's refreshing attempt to address the collective, identity-based nature of particular violent crimes such as lynching. Section 103(2) punishes the offence of murder as an aggravated crime when committed by a group of five or more persons do so in concert and motivated by specific identity-based grounds. These grounds include race, caste, community, sex, place of birth, language, and personal belief (ending with the abstract language of "or any similar ground"). This residual clause is important to understand. This section does not simply criminalize murder. It increases punishment when the intentionality behind the murder is framed in terms of bias against specific identity-based groups. The statutory purpose of an aggravated penalty means that threat of a death sentence or imprisonment for life may be imposed by the courts, in addition to a mandatory minimum prison sentence of seven years. This does not only provide for a heightened sentence, but it articulates a normative idea that each participant in the act is equally culpable regardless of their specific role in regard to the grievous nature of the act committed. In particular, the provision acknowledges the dangerous dynamic of mob violence where the total of the act is greater than the sum of its parts of each specific contribution to the act. Section 117(4) of the BNS, while legislatively constituted similar to Section 103(2) of the BNS, extends these trajectories to the offence of grievous hurt where it punishes circumstances where a groups of five or more, collectively and intentionally inflict grievous bodily harm on a person based on the same identity-based grounds as articulated in Section 103(2). Again, this section retains the same explanatory clause of "any other similar ground". The penalty for contravening this provisions can be imprisonment for term extending to a period of seven years and also carry the penalties of fine. Notably, both sections are considered cognizable and non-bailable offences, further demonstrating the intent of the legislator to treat the most serious of crimes in the most serious manner. Importantly, both provisions mark a migration away from an individual-focused criminal law towards a criminal law that pays attention to the social and collective motivational. The provisions acknowledge and introduce legal recognition of bias-induced or motivated group violence, which is something of a historical absence in sovereignty outline in the virtue of being formulated in the Indian Penal Code, 1860. However, how fit the provisions of this section are will depend on integrity of the origins through the lens of the language and the accountability of both the interpretative process and eventual enforcement. These sections may foreshadow a legislative foothold against lynching.

Distinction from IPC Provisions

The sections of the Bharatiya Nyaya Sanhita, 2023, introduced in sections 103(2) and 117(4) represent a serious inflection away from their predecessors under the Indian Penal Code, 1860 (IPC), which contained no corresponding equivalence in scope or specificity. The IPC, for instance, dealt with violent acts like murder and grievous hurt through sections 302 and 320, respectively, without identifying or even recognizing the dimension of ordinary violence aggravated by group-based identity animus. Group dynamics, of course, were represented only in an oblique fashion, through sections like 34 (common intention) and section 149 (unlawful assembly), both of which are procedural gambits to assess group liability rather than substantive definitions evincing the motives or sociological justification for the violence. Murder under section 302 of the IPC, for example, was defined and punished without distinction. Likewise, grievous hurt under section 320, and the punishment for grievous hurt under section 325 were framed in terms that only identify the nature of the injury and did not refer to the social or group-based reason for inflicting grievous hurt. Accordingly, the IPC took no position on violence motivated by identity and treated the pluralistic dimensions of the actors as purely a relevant fact, not a description of a criminological phenomenon.

In contrast, the BNS sections 103(2) and 117(4) create a wholly new category of group violence motivated by identity. These provisions conceptualize the relationship between hate and violence by locating the motive, whether based on race, caste, sex, language, birthplace, or personal belief, at the core of the offence. This constitutes a change not just in severity of punishment, but redefines the very nature of the offence. The other major distinction is the procedural treatment of these laws. Whereas IPC offences such as murder were cognizable and non-bailable, it did not take such offences with particular identification based group attacks. BNS not only confirms this treatment regarding new provisions, but this procedural treatment linked to identification allows courts and police to treat these offences within a schema of procedural treatment.

So, while IPC treated a criminal act as an individual wrong with collective participation as a secondary concern, BNS fundamentally reimagines that notion whereby identified group violence is reconstructed to be understood, categorized and punished as a distinct form of harm. This comparative understanding allows us to understand that the BNS is not just a transition (from IPC to BNS) in language, but a structural shift in India's legislative understanding of the relationship between hate and collective violence with the law.

Disadvantages and the Judiciary

Sections 103(2) and 117(4) of the Bharatiya Nyaya Sanhita (BNS), 2023, represent a historic transition towards the recognition of identity-based group violence, but their structural and interpretative clarity remain intensely problematic. These provisions are unquestionably progressive in their intentions, but their current drafting falls short of doctrinal clarity and adequately thought-through procedural elements to make them practically enforceable

and conceptually amenable. One of the most significant problems lies in the ambiguity bemoaning the phrase "any other similar ground" [4]. The Official Gazette Notification outlines this phrase clearly for its purpose to ensure that all identity-based markers are considered properly within the ambit of aggravated group crimes. However, an earlier version of BNS published by Universal LexisNexis, simply left the word "similar" out and changed the phrase to "any other ground." This one minor typeface change opened the law up to allow to prosecute potentially any "motive," such as past emotional grievances, property disputes or even an economically driven rivalry. But the law was drafted to only be the remedy related to identity-based hate motivated violence.

The impact of thinking of this misprint is not theoretical, but real and substantial. Grasping the extent of this distortion, the Jharkhand High Court took suo motu cognizance of this drafting and flagged it for being such a serious defect that impacted on the certainty and legislative purpose of section 103(2). The court noted, unless corrected urgently, such a misprint could lead to judicial confusion, wrongful prosecution or further doubt of the law's specificity to hate-crime grouping. The court issued an order to the publisher, requiring them to proceed with public corrections, while minimizing any further distribution of the flawed editions. This is an order from the court that illustrated the importance of precise legislative language. However, beyond this publishing error, there are also substantive questions. First, "in concert" means five or more people must act in concert. This would exclude a group of four or less, or even individual actors who commit hate-motivated violence. Second, although markers of identity are defined, the list is limited and does not include contemporary aspects like disability, sexual orientation or online affiliation. These omissions risk excluding the contemporary manifestations of hate crime. Further the court did not prescribe any specific procedural innovations to provide focus and brevity in more impacted cases. BNS also does not call for data collection, victim protection or community outreach. Ultimately, these drafts, despite BNS fulfilling the void created by the IPC have cracks suggesting further attention. The judicial activity of the Jharkhand High Court iterates that legislative change must aspire to be progressive, but must also have substantive strength and procedural rigor. These substantive, conceptual and procedural defects need to be remedied in a timely manner for the BNS to provide a serious check to prevent the rising threat of identity-motivated mob violence in India.

Discussion

The primary data collected the conduct of the research indicate an enduring and concerning difference between statutory authority and social belief in accountability for group violence. Although the Bharatiya Nyaya Sanhita (BNS) articulates progressive statutory markers to punish group-based identity crimes. This concerns not only inadequate punishment, but also the incongruence between how law envisions justice with how community experiences justice emotionally. The visual data highlights that a large number of respondents continue to justify public violence when a perceived transgression violates deep-seated community hierarchies or cultural norms. Even when

respondents did demonstrate some realization of the state's punitive capabilities, skepticism exists in terms of its immediacy, relevance, or congruence with community sensibilities. In summary, this reveals a structural flaw on deterrent theory as enacted in law. Through sections 103(2) and 117(4), the BNS constructs a framework that rationally targets collective action violence. However, the law does not operate in isolation, it requires cultural legitimacy. The public's movement towards swift, collective, and symbolic forms of retribution suggests that legal deterrence losing its value when it is not internalized as morally legitimate. The law can impose punishment, but the mob legitimizes that punishment [6].

A corollary observation is the inability of narrative power to be anchored in non-legal modes. Statutes such as BNS 103(2) are textual tools, but they must also serve as social messaging tools. The failure to procedurally articulate what is meant by acting in concert or to articulate how victims of collective violence might be protected creates a vacuum where abstract legality does not translate into practical justice. In spaces where emotional rhetoric and mass mobilization often shape the public's understanding of crime, there is an opportunity lost in a competing legal narrative that is culturally significant. Additionally, the intervention of the Jharkhand High Court regarding the removal of the word "similar" from a printed version of Section 103(2) illustrates how tenuous the authority of law becomes when the legal precision is undermined. The phrase, "any other ground" as opposed to "any other similar ground" serves to not only dilute that purpose of the law, but also inadvertently invites misappropriation, where acts that are unrelated to identity-based violence could be construed as such. It is significant that a linguistic error in the statutes resulted in judicial correction at the highest level and underscores how sensitive this jurisprudential task is to integrity in interpretation. All of this leads to a clear argument for improving the procedural clarity and ethical coherence of group violence laws in India. The BNS represents progress further from the IPC, but its usefulness is limited until it is not popularly engaged. Until the law starts to relate to lived experiences and until the law is not only understood as punitive but embodies justice, the preferences of the crowds will prevail over legal rationality. The paper has drawn attention to a central paradox: laws exist to prevent violence, but unless society believes in the justice those laws promise, their effect is only aspirational. Legal reform must come with cultural reform that leads to improvements not only in courts and legislatures but also in education, public discussion and institutional responsiveness. Without this, the gap between statute and society will continue to grow [7].

7. Conclusion

This paper aimed to ascertain whether recent provisions codified in the Bharatiya Nyaya Sanhita, 2023, specifically sections 103(2) and 117(4) represent a significant jurisprudential departure from the way India has treated lynching. By employing a combined doctrinal and empirical strategy, the paper considered the legal nature, structural placement and meaning of these provisions. The doctrinal analysis indicates that the BNS provisions have tried to explicitly identify and punish collective acts of violence

based on identity by providing statutory law. This shift is important but advances in this area remain hindered by conceptual ambiguity, definitional parameters, absence of procedural specificity and interpretive fragility arising from language issues. The Jharkhand High Court's suo motu intervention was a timely judicial reminder of why legislative clarity, in matters involving mass violence and community sentiments, is not just desirable but necessary. Empirically, the paper considered public attitudes towards state punishment and crowd justice through the analysis of empirical attitudes data from the responses of questions. The results reveal minimal public trust in formal legal institutions. The evidence shows public thinking is still tied to community logic and emotional immediacy, which are anchored in symbolic justice, over institutional processes. Therefore, in reality, the provisions of BNS undermined the effort since moral acceptability to commit public lynching could result in anger against laws based on the punitive response of impunity.

Together, the doctrinal and empirical strands of this research satisfy the central research objectives and questions in research. The paper traced the landscape of legal responses, from the IPC to BNS. It critically evaluates the strengths and weaknesses of the new framework for lynching; and establishes the distance in both perception and psychology from the law and the public. Further, it highlighted that the law quite possibly in and of itself does not inhibit the commission of violence, when the law is not perceived as credible. In conclusion, while BNS is an important doctrinal step forward, for treating lynching as a form of violence in India, its ultimate success will be shaped by its ability to bridge the gap between legislative intent, political will and social morality. A law that names the crime is an important step forward. But a law that commands, giving legitimacy to the collective moral imagination of the people is what India fundamentally needs, to tackle the social crisis of public lynching.

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