

Mob Lynching and Section 103(2) of the Bharatiya Nyaya Sanhita, 2023: Drafting Gaps, the Tehseen Poonawalla Guidelines, and Early Practice

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Abstract:

Section 103(2) of the Bharatiya Nyaya Sanhita, 2023 is the first provision in Indian criminal law that punishes mob lynching in express terms. It applies when a group of five or more persons, acting in concert, commits murder on a listed ground such as caste, community, sex, place of birth, language or personal belief. This article reads the provision closely and points out where its drafting may cause trouble in court. It looks at the five-person threshold, the closed list of grounds, the words "acting in concert", and a printing error that the Jharkhand High Court had to correct. It then compares the section with the directions in *Tehseen S. Poonawalla v. Union of India* and shows that the two do different jobs. Finally, it examines how the section has been used so far, drawing on the Kerala High Court's Walayar bail decision, a recent Delhi charge-sheet, and the Supreme Court's 2025 order on compliance with *Tehseen Poonawalla*. The article ends with practical suggestions for amendment and for investigators.

Keywords: mob lynching; Bharatiya Nyaya Sanhita; section 103(2); *Tehseen Poonawalla*; hate crime; criminal law reform.

I. Introduction

For many years, Indian courts had no special law for mob lynching. When a crowd killed a person, the police charged the members under the general rules for murder, rioting and unlawful assembly. The Indian Penal Code, 1860 did not use the word "lynching" anywhere.¹ In 2018, a three-judge bench of the Supreme Court said that this was not enough. In *Tehseen S. Poonawalla v. Union of India*, the Court called on Parliament to create a separate offence and, until then, laid down a set of directions for the police and the state governments.²

¹Indian Penal Code, 1860, No. 45 of 1860, §§ 34, 149, 300, 302 (India) [hereinafter IPC] (repealed 2024).

²*Tehseen S. Poonawalla v. Union of India*, (2018) 9 SCC 501 (India) [hereinafter *Tehseen Poonawalla*].

Parliament answered that call six years later. The Bharatiya Nyaya Sanhita, 2023 (BNS) came into force on 1 July 2024 and replaced the IPC.³ Section 103(2) of the new Code deals with murder by a group of five or more persons on certain grounds. It is widely described as the mob lynching provision. Section 117(4) does a similar job for grievous hurt.⁴

A new offence is only as good as its wording and its use. This article asks three questions. First, what are the drafting problems in section 103(2), especially the group-of-five threshold and the list of grounds? Second, how does the section relate to the guidelines in *Tehseen Poonawalla*? Third, is the section being used in practice, and if so, how? The discussion is based on the text of the BNS, reported court decisions, and news reports of recent cases up to October 2026. Because the section is barely two years old, the material on its use is thin, and the conclusions in Part V are therefore stated with care.

II. What Section 103(2) Says

Section 103(1) repeats the old punishment for murder: death or imprisonment for life, and a fine.⁵ Murder itself is defined in section 101, which replaces the old section 300. Section 103(2) is the new part. It says that when 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 punished with death or imprisonment for life, and shall also be liable to fine.⁶

Four things must therefore be shown. There must be a group of at least five persons. They must have acted in concert. They must have committed murder. And the murder must have been done on one of the listed grounds or a similar one. The word "each" matters. Every member of the group is punished as if he alone had committed the murder, so the prosecution does not have to prove who struck the fatal blow.

The Kerala High Court has described the purpose of the section in simple terms. In its view, Parliament meant to treat murder by a group on these grounds as more serious than ordinary murder, and to deal with the danger of mob lynching.⁷ That reading is fair. But the Court did not need to test the wording of the section in that case, and the wording is where the difficulties lie.

III. Drafting Problems

A. The group-of-five threshold

The first problem is the number. Section 103(2) applies only to a group of "five or more". A group of four that kills a man on the same ground falls outside the section and is dealt with under section 103(1). The

³Bharatiya Nyaya Sanhita, 2023, No. 45 of 2023 (India) [hereinafter BNS]. The BNS took effect on July 1, 2024.

⁴BNS, *supra* note 3, § 117(4).

⁵BNS, *supra* note 3, § 103(1); *cf.* IPC, *supra* note 1, § 302.

⁶BNS, *supra* note 3, § 103(2). The wording used here follows the text quoted by the Jharkhand High Court from the official publication. *See* Court on Its Own Motion v. Union of India (Jhar. July 1, 2024) (order), reported in "Embarrassing": Jharkhand HC Directs Universal LexisNexis to Immediately Rectify Publishing Error in Bare Act, Verdictum (July 2024), <https://www.verdictum.in/court-updates/high-courts/jharkhand-high-court-court-on-its-own-motion-v-union-of-india-suo-moto-cognizance-rectify-publishing-error-bhartiya-nyaya-sanhita-1542418>. Some commentaries also add an alternative sentence of imprisonment "not less than seven years." That wording does not appear in the court-quoted text, and readers should check the Gazette copy before relying on it.

⁷State of Kerala v. Anu, 2026:KER:24661 (Ker.) (India); *see* Agatha Shukla, *Mob Lynching U/S 103(2) BNS More Serious Than Ordinary Murder: Kerala High Court Cancels Bail of 8 Accused in Walayar Lynching Case*, Verdictum (Mar. 20, 2026), <https://www.verdictum.in/court-updates/high-courts/kerala-high-court/state-of-kerala-v-anu-2026ker24661-mob-lynching-us-1032-bns-walayar-lynching-case-1610310>.

same number appears in section 117(4) for grievous hurt.⁸ The choice of five looks borrowed from the law of unlawful assembly, which also needs five persons.⁹ But a lynching is a social event, not a technical one. Four attackers can be just as frightening and just as deadly as five, and the victim's community feels the same fear.

The threshold causes three practical difficulties. The first is proof. Mob cases happen in the dark, in crowded streets, or in villages where witnesses fear the attackers. Police often identify only a few faces. If the prosecution can name only four of the attackers, it cannot easily invoke section 103(2), even though everyone knows that a larger crowd was present. The second difficulty is acquittals. Suppose six people are charged and the trial court gives the benefit of the doubt to two of them. Only four remain, and the conviction under section 103(2) may fail on the number alone. A similar worry has long existed in cases of unlawful assembly, and it can now arise in lynching trials as well. The third difficulty concerns minors. In the recent Delhi case discussed below, the reports say that the group included a minor. A juvenile is tried by the Juvenile Justice Board, not by the Sessions Court, so the adult count in the main trial may be lower than the real size of the crowd.

There is also a deeper point. The number five does not tell us why a larger group is more dangerous. A better test would ask whether the killing was done by a group acting together to punish someone for who he is or what he is believed to be. The size of the group would then be a fact that helps prove this, not a gate that decides whether the offence exists. Parliament can still keep a number, but it should accept that every number leaves some deserving cases outside it.

B. The listed grounds

The second problem is the list of grounds. The section names race, caste or community, sex, place of birth, language and personal belief, and then adds "any other similar ground". This design turns a mob murder into a special offence only when a particular motive is proved. The motive must be an identity-based one. Several practical gaps follow. First, religion is not named. Courts will probably read it into "community" or "personal belief", but a new offence should not leave a basic ground to interpretation. Second, many Indian lynchings do not fit neatly into the list. Crowds have killed people on suspicion of cattle theft, of child kidnapping spread through rumours, or of witchcraft. In these cases the attackers may act out of fear, anger or false belief rather than prejudice against a group. A court could well hold that none of the listed grounds is present, and the case would then fall back to ordinary murder. Third, motives are often mixed. A dispute over money or noise may turn into a killing because the victim is an outsider. If the prosecution must prove the ground beyond reasonable doubt, the question of which motive "caused" the killing becomes a hard factual fight.

The Delhi chargesheet shows how this may play out. According to news reports, the victim was a music teacher from Manipur who was beaten to death in September 2026 after he asked a group to lower loud noise. The Delhi Police have charged seven persons under both section 103(1) and section 103(2).¹⁰ The news report does not say which ground the police rely on, and I have not seen the chargesheet. The case

⁸BNS, *supra* note 3, § 117(4).

⁹Compare BNS, *supra* note 3, § 189 (unlawful assembly), with IPC, *supra* note 1, § 141.

¹⁰*Delhi Police Files Chargesheet Against 7 for Mob Lynching of Manipuri Music Teacher*, ANI (Oct. 19, 2026), <https://aninews.in/news/national/general-news/delhi-police-files-chargesheet-against-7-for-mob-lynching-of-manipuri-music-teacher16020261019112515>.

will therefore be a useful test. If the trial court is asked to decide whether a quarrel over noise can become a killing "on the ground of" place of birth or community, its reasoning will show how strictly the courts read the list.

The words "any other similar ground" give courts some room. Under the usual rule of interpretation, a general phrase that follows a list takes its colour from the list, so the extra grounds must be like those already named. This rule would probably cover religion and ethnicity. It may not cover rumour-driven or vigilante killings, which are among the most common forms of lynching. Parliament could solve this by adding a second limb that covers killings by a group acting on suspicion of an offence or on a belief that the victim deserves collective punishment.

C. "Acting in concert"

The third problem is the phrase "acting in concert". The BNS already has a rule for acts done by several persons with a shared intention, and another for members of an unlawful assembly who share a common object.¹¹ Section 103(2) uses neither expression. It uses a looser phrase that the Code does not define. Defence lawyers may argue that "in concert" demands proof of a prior plan, which a spontaneous crowd rarely has. The prosecution will argue that it simply means acting together at the time. Until the Supreme Court explains the phrase, trial courts may take different views, and accused persons in similar cases may be treated differently.

The section also does not say what happens to a person who stood in the crowd, shouted slogans, or filmed the attack but did not strike anyone. Under section 103(2) each member receives the same punishment. That may be right for those who joined the attack, but the section gives the judge no way to separate the leader from the onlooker. It offers only death or life imprisonment. This may push courts to read "member" narrowly, or to look for reasons to acquit marginal accused.

D. The printing error

A fourth issue is the text itself. In July 2024, only days after the BNS came into force, the Jharkhand High Court took up the matter on its own after noticing that a commercial edition of the BNS printed "any other ground" in section 103(2) instead of "any other similar ground". The Court said this single word changed the meaning of the offence and ordered the publisher to correct it.¹² The episode is more than a curiosity. Without the word "similar", the ground would be open-ended and almost any motive could qualify. With it, the ground is narrow. The point shows how much the offence depends on small words, and why careful drafting matters.

E. Missing definitions and a weak fit with section 117(4)

Finally, the BNS never defines "lynching". The section describes a murder by a group, and that is all. It does not say what counts as a "group", whether the group must be gathered in one place, or whether an attack planned through social media and carried out by separate teams is covered. Section 117(4) is also lighter than section 103(2) in its sentence. The result is a gap between murder and grievous hurt that leaves

¹¹BNS, *supra* note 3, §§ 3(5), 190; *cf.* IPC, *supra* note 1, §§ 34, 149.

¹²Court on Its Own Motion v. Union of India (Jhar. July 1, 2024) (order); *see* Jharkhand HC Takes Suo Moto Cognizance of Error in BNS Published by Universal LexisNexis, LiveLaw (July 2024), <https://www.livelaw.in/high-court/jharkhand-high-court/25>.

out the many cases in which the victim survives with serious injuries, or is attacked by fewer than five persons.¹³ In addition, section 103(2) itself says nothing about protection for witnesses, which many writers see as the main reason why group-violence trials fail. The procedural code only asks each state to prepare a witness protection scheme, and nothing in the section ties that scheme to lynching cases.¹⁴

F. Overlap with the Atrocities Act

Where the victim belongs to a Scheduled Caste or Scheduled Tribe, section 103(2) will often be charged together with the Atrocities Act. The two laws use different tools to prove motive. The Kerala High Court noted that section 8(c) of the Atrocities Act carries a statutory presumption about the accused's knowledge of the victim's caste identity when a group commits the offence.¹⁵ Section 103(2) has no such presumption. The prosecution must prove the ground of the killing in the ordinary way. This means that the same crowd can be treated more or less strictly depending on which law is applied, and a case that is strong under the Atrocities Act may still be weak under the BNS. Drafters should consider whether a limited presumption, or a rule that courts may draw an inference from the words and conduct of the group, would make the two laws work better together.

The overlap also raises a sentencing question. Both laws punish the same act on a similar basis, and a judge who convicts under both must decide how the sentences relate. The statute is silent on this point, so the courts will have to work it out case by case.

IV. Section 103(2) and the Tehseen Poonawalla Guidelines

It is tempting to think that section 103(2) replaces the guidelines in *Tehseen Poonawalla*. It does not. The two operate at different stages. The guidelines are about what the state must do before and after a lynching. The section is about how a court punishes the offenders after the event.

The Supreme Court in 2018 grouped its directions into preventive, remedial and punitive measures. They include appointing a nodal officer in every district, not below the rank of Superintendent of Police, to prevent mob violence; a duty on every police officer to stop a gathering that seems likely to turn violent; prompt registration of the FIR; compensation for victims; fast-track courts to try lynching cases; and disciplinary action against officers who fail in their duty.¹⁶ These directions bind all authorities under Article 141 of the Constitution of India.

Point	Tehseen Poonawalla (2018)	BNS section 103(2) (2023)
Nature	Judicial directions to the state	Penal provision applied by courts

¹³BNS, *supra* note 3, § 117(4).

¹⁴Bharatiya Nagarik Suraksha Sanhita, 2023, No. 46 of 2023, § 398 (India); see Sarmeet Kaur & Lakshya, *Justice: Criminal Liability, Investigation and Legal Reform for Mob Lynching in India*, 7 Int'l J. Res. Publ'n & Rev. (n.d.), <https://ijrpr.com/uploads/V7ISSUE7/IJRPR68398.pdf> (arguing that section 103(2) closes a symbolic gap but leaves material gaps).

¹⁵State of Kerala v. Anu, *supra* note 7; Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, No. 33 of 1989, § 8(c) (India).

¹⁶*Tehseen Poonawalla*, *supra* note 2. The pinpoint paragraphs of the directions should be added from the reported judgment.

Point	Tehseen Poonawalla (2018)	BNS section 103(2) (2023)
Main focus	Prevention, victim relief, official accountability	Punishment of those who committed the killing
Who must act	Police, nodal officers, state governments	Prosecutors and trial courts
Size of the mob	Any mob or crowd	Five or more persons
Motive needed	None; covers all mob violence	Listed grounds or a similar ground
Victim support	Compensation and rehabilitation directed	Not dealt with
Official failure	Disciplinary action; contempt	Not dealt with

The table shows why the two cannot be treated as substitutes. A lynching of two persons by a mob of fifty on suspicion of cattle theft would fall squarely within the guidelines but may not satisfy the ground required by section 103(2). The guidelines would still require the nodal officer to supervise the case and require compensation to be paid. On the other hand, section 103(2) says nothing about the failure of a police station to register a complaint or to act on advance information. Only the guidelines address that. The Supreme Court has recently said as much. In February 2025, while closing a public interest petition filed by the National Federation of Indian Women, a bench of Justices B.R. Gavai and K. Vinod Chandran repeated that the directions in *Tehseen Poonawalla* are binding under Article 141. The bench added that a person who is affected by non-compliance can seek a legal remedy, but that the Court cannot monitor incidents in different states from Delhi. It also refused to fix a uniform amount of compensation, and sent challenges to state laws to the High Courts. The Solicitor General told the Court that mob lynching is now a separate offence under the BNS and that only the *Tehseen Poonawalla* directions remained to be followed.¹⁷ The effect of this order is that enforcement is now left to individual victims and to High Courts. For poor families of victims, that is a heavy burden.

The history of compliance gives reason for worry. In September 2018, only weeks after the judgment, the Supreme Court was told that just 11 of 29 states and two of seven Union Territories had filed compliance reports, and it gave the rest another week.¹⁸ A criminal provision cannot repair that kind of administrative failure. It acts only after a body has been found.

V. Is the Section Being Applied?

The answer, so far, is "yes, at the stage of charging and bail, but not yet at the stage of final judgment". I could not find a reported conviction under section 103(2) in the sources available up to October 2026, and

¹⁷Nat'l Fed'n of Indian Women v. Union of India, W.P.(C) No. 719/2023 (India Feb. 11, 2025) (order); see Sukriti Mishra, *Breaking | Can't Monitor Incidents in Different States Sitting in Delhi: SC Closes NFIW's Plea Against Alleged Mob Lynching Cases*, Verdictum (Feb. 11, 2025), <https://www.verdictum.in/court-updates/supreme-court/mob-lynching-national-federation-of-indian-women-tehseen-poonawalla-1567739>.

¹⁸SC Pulls Up Lax States over Lynchings, Hindustan Times (Lucknow), Sept. 8, 2018, <https://www.pressreader.com/india/hindustan-times-lucknow/20180908/281535111878494>.

no official figures for section 103(2) cases were located. The few decisions and reports that exist are discussed here.

A. The Walayar case in Kerala

The most important decision so far is *State of Kerala v. Anu*. According to the report of the case, a migrant worker from Jharkhand who had come to Kerala only a few days earlier was killed by a mob in December 2025. The accused were charged under sections 103(1) and 103(2) of the BNS and under section 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. The Special Judge had granted regular bail to eight of them after they had spent between 25 and 43 days in custody. The High Court cancelled the bail because the Special Judge had not given notice to the victim's dependent, as section 15A(3) of the Atrocities Act requires.¹⁹

Two lessons follow. The first is that courts are treating section 103(2) as a sign of seriousness. The High Court relied on it, together with the Atrocities Act, to say that bail in such a case needs careful handling. The second is that the case turned on procedure and on the rights of the victim's family, not on the meaning of the section. Reports of the decision do not show the Court deciding which of the listed grounds was involved, or how "acting in concert" is to be understood. The big questions raised in Part III therefore remain open.

B. The Delhi charge-sheet

The Delhi case shows the speed at which an investigation can move. The attack took place on 6 September 2026. The charge-sheet was filed before a Magistrate on 1 October 2026, about four weeks later, against seven persons under sections 61, 103(1), 103(2) and 332(a) of the BNS. The Magistrate sent the case to the Sessions Court because the offences are triable only there.²⁰ This is a good sign for the investigating agency. It also tells us that the police are prepared to use section 103(2) even where the trigger was an everyday quarrel. Whether the charge survives the framing stage will depend on how the court views the ground of the killing.

C. What the early record suggests

Three points can be made from this limited material. First, police and prosecutors are adding section 103(2) to murder charges, usually along with section 103(1), which is a sensible way to protect the case if the special ground is not proved. Second, the higher courts are using the section to reason about bail and about the seriousness of the crime, even before any trial ends. Third, the real tests, which are the definition of the ground, the meaning of "in concert" and the effect of the five-person rule, are still ahead. Until trial courts and the Supreme Court speak, the section's practical value will remain uncertain.

VI. Suggestions

The following steps could make the section more useful without changing its purpose.

- Parliament may amend section 103(2) to say expressly that religion and ethnic origin are included, and to cover killings committed on suspicion of an offence or in the name of collective punishment.

¹⁹State of Kerala v. Anu, *supra* note 7; Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, No. 33 of 1989, §§ 3(2)(v), 15A(3) (India).

²⁰Delhi Police Files Chargesheet Against 7 for Mob Lynching of Manipuri Music Teacher, *supra* note 10.

- The threshold could be lowered or restated, for example to "a group of persons" with a rule that the court may take the size of the group into account. At the least, the Code should say that a conviction does not fail merely because some members of the group are unknown, absconding or tried separately as juveniles.
 - The phrase "acting in concert" should be defined, or replaced by wording already known to the law, such as shared intention or common object.
 - The Code should add graded sentences so that a court can treat a leader differently from a person who joined the crowd late.
 - States should be reminded that the nodal officer system under *Tehseen Poonawalla* still applies, and police training should cover how to record the ground of the offence early in the investigation, through witness statements and electronic evidence.
 - The witness protection scheme that each state must prepare should be made to work in lynching cases, and a clear duty to notify victims' families at each stage should be adopted. The Kerala decision shows how easily a family can be left out.
- Investigators can also do something today. They should record, at the first stage, who the victim was, what the crowd said or shouted, and what messages were exchanged before and after the attack. That kind of evidence is what will prove the ground, and it is hard to collect later.

VII. Conclusion

Section 103(2) is a welcome step. It names an offence that the law avoided naming for decades, and it carries the heaviest punishment known to the Code. Early cases show that courts and police are willing to use it. But a new offence also brings new difficulties. The group-of-five rule excludes smaller mobs and creates problems of proof. The closed list of grounds may leave out many real lynchings, particularly those driven by rumour. The phrase "acting in concert" is undefined, and the printing error in 2024 reminded everyone how fragile the wording is.

The section also cannot do the work of *Tehseen Poonawalla*. It begins to operate only after a person has been killed. Prevention, quick registration of complaints, compensation, and accountability for officials still depend on the state following the Supreme Court's directions. The Court's 2025 order leaves that task largely to victims and High Courts. The best use of section 103(2) is therefore as one part of a wider system, which must also include careful investigation, real witness protection and steady compliance with the guidelines. Future research should return to the section once trial courts have decided the first cases under it.