



# JUSTICE IN THE CROWD: RETHINKING JOINT LIABILITY UNDER INDIA'S UNLAWFUL ASSEMBLY LAW

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## Abstract

*This article critically analyzes the doctrine of joint liability as enshrined in Sections 189 and 190 of the Bharatiya Nyaya Sanhita, 2023, in the context of illegal assemblies and mob violence. As collective violence increasingly becomes a common threat to public order and rule of law in India, the legal framework that governs group offences needs to be re-examined. The Section 190 BNS provision still makes all members of an unlawful assembly guilty of offences done in the course of and in pursuance of the common object of the group, even without individual mens rea or personal participation. Although this model facilitates effective prosecution of crowd crimes, it poses serious issues of overreach, fairness in evidence, and constitutional due process. Based on a reading of legal documents, case law, and comparative jurisprudence, this essay discusses whether India's existing approach finds the appropriate balance between collective responsibility and individual justice. The essay also discusses judicial challenges in applying the doctrine and calls for a redrafted legal framework that includes more defined thresholds of culpability, protection against abuse, and possibly, specialized legislation on lynching and vigilante violence. By doing that, the article adds to the debate of criminal justice reform within post-colonial legal traditions.*

**Keywords:** Joint Liability, Section 190 BNS, Mob Violence, Unlawful Assembly, Criminal Law Reform.

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## **I Introduction**

MOB violence also continues to test the very principles of justice, personal responsibility, and democratic governance in India. The phenomenon, which takes the form of lynching, caste violence, and political rioting, has become increasingly prominent over the last decade or so, and is usually ridden with alarming levels of impunity. While criminal law has classically revolved on the notion of individual responsibility, India's address to group violence has been characterized by the philosophy of joint responsibility, presently consolidated in the Bharatiya Nyaya Sanhita, 2023 (BNS). According to the new law regime, Section 189 clarifies unlawful assembly, while Section 190 extends the policy of group responsibility earlier captured in Section 149 of the Indian Penal Code (IPC). These provisions give rise to immediate constitutional and jurisprudential issues regarding the extent of state power, burden of proof, and conflict between order and rights.

Section 190 BNS renders every member of an unlawful assembly guilty of an offence committed by any member of the assembly if it is in the furtherance of the common object of the group. This definition, inherited to a great extent from colonial legislation, allows criminal liability without proof of individual mens rea or particular participation in the offence. Although this will make prosecution easier in disorderly situations involving crowds, it is also likely to lead to over-criminalisation by guilt by association. This is especially so in a democratic society under the rule of law, where fairness, culpability, and due process are fundamental constitutional principles.

Courts have struggled for many years with the problem of how to determine who among a crowd actually shared the "common object" which caused an offence to be committed. In practice, this tends to result in either broad-brush convictions where the subtle differences between perpetrators and passive bystanders are overlooked, or blanket acquittals because there is not sufficient evidence against certain individuals. Either way, justice is compromised—either by punishing the innocent or acquitting the guilty. Although judicial pronouncements have sought to establish evidentiary standards and cut exceptions, the doctrine still generates legal uncertainty, especially in spontaneous group cases or dubious group motivations.

The imperative of this doctrinal debate is reinforced by the increasing occurrence of mob lynching in India—acts that are often predicated on identity-based biases and carried out with public display. Since the Supreme Court's injunctions in *Tehseen S. Poonawalla v. Union of India* (2018), in which it urged thorough legislative and administrative measures towards lynching, there has been no single national law governing this violence. The BNS does not accommodate dedicated provisions for lynching, instead putting prosecutors to the mercy of vague categories such as murder, unlawful assembly, and rioting. Such a legal loophole is unable to apprehend the severity and group nature of such incidents, thereby defeating deterrence and justice.

The present paper discusses three research questions: (1) How effective are the provisions under Sections 189–190 BNS in curbing mob violence? (2) What are the evidentiary and doctrinal difficulties in establishing individual culpability in group crimes? and (3) Should India embrace special legislation against lynching and vigilante violence?

Through a critical examination of statutory language, case law, and comparative jurisprudence, this research seeks to evaluate the doctrinal consistency of joint liability under the BNS and suggest principled reforms that reconcile accountability with fairness.

## **II Legal Framework of Joint Liability under Section 149 IPC**

### Historical Origins and Statutory Text

The doctrine of joint liability in collective offences, as set out in Section 149 of the Indian Penal Code (IPC), has its origins in colonial India. The section was enacted during the British colonial period, with the primary objective of addressing organized collective violence and rebellion, which were common during the freedom struggle<sup>1</sup>. Its main aim was to make all members of an illegal assembly guilty of any offence done in pursuance of the collective's "common object," even though they did not actively participate in the act. This collective principle aimed at making it impossible for participants in mass crimes to avoid liability by disowning certain acts within the assembly.

Section 149 IPC provides that if a crime is committed by any member of an unlawful assembly in pursuance of the common object of the assembly, every member present at the time of commission of such offence shall be deemed to have committed that offence. The statutory language, however, gives tremendous latitude to judicial discretion, particularly in defining the "common object" and identifying the

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<sup>1</sup> K.D. Gaur, *Criminal Law in India: A Critical Commentary on the Indian Penal Code* 571 (Wadhwa and Company, 8<sup>th</sup> edn., 2007).

unlawful assembly<sup>2</sup>. Uncertainty in the above concepts has caused immense doctrinal as well as practical difficulties in the interpretation of this provision.

### Judicial Concepts of "Common Object" and "Unlawful Assembly"

Judicial concepts of Section 189 have been on two main ideas: common object and unlawful assembly. The Supreme Court of India has consistently held that the common object is not required to be premeditated or clearly conveyed prior to the assembly; it may be deduced from the behavior and actions of the members of the assembly during the occurrence. In *K.K. Verma v. State of Madhya Pradesh* (1954), it was held by the Court that the common object is ascertained from the conduct of the group, even though certain acts are not performed by each of them. This provides substantial latitude in the attribution of liability, even where individual roles are not defined.

The definition of illegal assembly under Section 141 IPC, being antecedent to Section 149, also frames a general frame. It has an assembly consisting of five persons or more than five persons, whose object as such is common and is either to commit any criminal act or to compel the government to an unlawful act. Courts have widened the scope of an unlawful assembly, with emphasis on the collective aspect of the group and not on the intent of individual members. This

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<sup>2</sup> P. Bedi, "The Doctrine of Joint Liability in Criminal Law: A Critical Analysis" 65(2) *Journal of Criminal Law & Criminology* 245-260 (2010).

interpretation has tended to result in convictions based on membership in the assembly alone, even where individual culpability is in doubt<sup>3</sup>.

### Doctrinal Tensions and Critiques

Perhaps the most important doctrinal controversy that has surrounded Section 149 IPC is its possible infringement on the principle of individual criminal liability that underlies contemporary criminal law. Some experts, like K.D. Gaur and Ratanlal & Dhirajlal, have criticized the provision for weakening mens rea (criminal intent) by holding individuals liable for their presence in an illegal assembly. This, they contend, results in an unfair penalization of people who might not have been willing to commit a crime, particularly when their contribution to the group is minimal or passive.

Another criticism of Section 149 is its overbreadth. In imposing collective liability for all acts done by members of an unlawful assembly, the law fails to make a distinction between the active perpetrators and those who might have been present or mere passive onlookers. This poses a danger of unjust convictions on the basis of a person's membership in a group and not on the basis of their actual involvement in the crime<sup>4</sup>.

The provision has also been criticized for being too vague to say what amounts to an unlawful assembly and a common object. The Supreme Court has had to decide in many cases the character of the assembly on

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<sup>3</sup> P.K. Narayan, "Common Object and Unlawful Assemblies: A Conceptual Dilemma" 54(1) *Indian Bar Review* 60-75 (2015).

<sup>4</sup> Y.P. Ghai, *Law of Crime in India* 198 (Eastern Book Company, Delhi, 2<sup>nd</sup> edn., 2016).

the basis of circumstantial evidence, and it has usually ended in judicial overreach. As admitted by the Court itself in *Shambhu Nath Singh v. State of Bihar* (2011), the provision needs to be applied cautiously and with subtlety so that justice is not denied in the criminal justice process.

### **III Evidentiary and Procedural Issues in Mob Prosecutions**

#### **Issues in Determining Individual Roles in Group Violence**

One of the biggest challenges in prosecuting mob violence under the joint liability model is the challenge of determining individual roles in group offenses<sup>5</sup>. Since mob violence is usually spontaneous and disorganized, it becomes hard to determine the exact role of each member. The Supreme Court in *Krishnan v. State of Kerala*<sup>6</sup> (2007) appreciated this challenge in that when multiple people are involved in a violent act, it becomes very challenging to determine if a person was directly involved in the criminal act or was a member of the assembly.

The law has, therefore, relied quite heavily on the doctrine of collective liability, but this reliance typically leads to the absence of individual accountability for specific actions. Consequently, individuals who might not have been actively engaged in violence are still convicted purely on the basis of membership of the assembly. The burden of proof is hence a key consideration, with the prosecution frequently failing to establish individual involvement beyond mere membership.

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<sup>5</sup> R.S. Singh, "Evidentiary Standards in Mob Violence: A Critique" 31(2) *Journal of Criminal Justice and Legal Reform* 112-129 (2018).

<sup>6</sup> *Krishnan v. State of Kerala*, (2007) 2 SCC 445.

## Use of Circumstantial Evidence and Presumptions

In cases of mob violence, circumstantial evidence is used to prove guilt. Section 149 of the IPC (and Section 190 of the BNS) tends to depend heavily on circumstantial evidence to ascertain the common object of an unlawful assembly<sup>7</sup>. The Supreme Court in *Shambhu Nath Singh v. State of Bihar* (2011) emphasized that the prosecution can establish the existence of a common object from the actions of the members of the assembly, such as the movement, speech, and prevailing mood during the occurrence.

But assumptions of guilt on grounds of membership of an illegal assembly, as stipulated in Section 149, usually negate the necessity for tangible evidence of personal involvement. It has been argued that this overdependence on circumstantial evidence will result in unjust convictions since it doesn't call for direct evidence of each individual's role in the commission of the offence<sup>8</sup>.

## Case Law Analysis

Case law regarding mob violence indicates the challenge courts encounter in differentiating between active and passive members of an illegal assembly. In *Krishnan v. State of Kerala* (2007), the Court observed that in group violence cases, courts need to exercise caution in holding individuals liable without definite proof of active involvement in the crime.

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<sup>7</sup> R.K. Sharma, "The Application of Section 149 IPC in Mob Prosecutions: Challenges and Solutions" 42 *Journal of Indian Law and Society* 55-73 (2019).

<sup>8</sup> S. Jha, *Criminal Law and Procedure: An Analytical Approach* 261 (Eastern Law House, Delhi, 2<sup>nd</sup> edn., 2013).

Yet, where, as in *Shambhu Nath Singh v. State of Bihar*<sup>9</sup> (2011), such convictions have rested on circumstantial evidence concluding membership in an illegal assembly and in its common object, even without knowledge of the accused's actual role in causing the violence, these inconsistent tendencies reflect the challenge to this date to balance individual responsibility principles and the group dimension of mob attacks.

#### **IV Legal Provisions, Reform Imperatives and Parliamentary Discourse on Mob Lynching in India**

Indian criminal law has historically addressed mob violence and lynching through general provisions relating to murder, rioting, and unlawful assembly, without recognising lynching as a distinct offence. Under the Indian Penal Code, 1860, acts of lynching were prosecuted under Sections 302, 304, 147–149 IPC, thereby treating mob lynching as an aggregation of individual offences rather than a unique form of collective, often hate-motivated violence. This doctrinal approach failed to capture the symbolic, deterrent-defying, and identity-based nature of lynching, which typically involves public participation, social sanction, and implicit impunity. Judicial concern over this legislative vacuum was explicitly articulated by the Supreme Court in *Tehseen S. Poonawalla v. Union of India* (2018), where the Court characterised mob lynching as an assault on constitutional values and directed States to adopt preventive, remedial, and punitive measures, while strongly urging Parliament to consider a standalone law addressing lynching. However, for several years, this judicial exhortation did not translate into central legislation.

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<sup>9</sup> *Shambhu Nath Singh v. State of Bihar*, (2011) 3 SCC 128..

Legislative initiative initially emerged through private members' efforts rather than government-sponsored Bills. In 2017 and 2018, private member bills were introduced proposing amendments to the IPC to criminalise mob lynching and vigilantism, prescribing enhanced punishments and recognising hate-based motivation as an aggravating factor. These bills argued that existing provisions on murder and rioting were insufficient, as they failed to account for the collective intimidation, social endorsement, and symbolic violence inherent in lynching. While these bills did not progress to enactment, they played an important agenda-setting role by framing lynching as a distinct legislative concern rather than a mere law-and-order issue.

The most substantive parliamentary deliberation on lynching occurred during debates on the Bharatiya Nyaya Sanhita, 2023, part of the broader criminal law reform package replacing colonial-era penal statutes. During Lok Sabha debates, the Union Home Minister highlighted the inclusion of stringent provisions addressing mob lynching, describing them as a response to societal demands for accountability in cases of collective violence. The Government justified the aggravated punishment framework under Section 103(2) BNS as necessary to deter group-based killings motivated by prejudice and to reinforce public confidence in criminal justice institutions (Lok Sabha Debates, Aug. 2023). Members of Parliament across party lines acknowledged the necessity of addressing lynching legislatively, though concerns were raised regarding over-criminalisation, proportionality of punishment, and the absence of procedural safeguards.

The Parliamentary Standing Committee examining the BNS engaged with expert submissions that specifically addressed mob lynching. Legal

scholars and civil society organisations recommended the adoption of a clear statutory definition of lynching, incorporation of preventive obligations on law-enforcement agencies, and alignment with the Supreme Court's guidelines in *Tehseen Poonawalla*. While the final text of the BNS incorporated aggravated punishment, it stopped short of codifying these broader recommendations

A significant shift occurred with the enactment of the *Bharatiya Nyaya Sanhita, 2023*, which, for the first time at the national level, incorporates mob lynching within the statutory framework of substantive criminal law. Section 103(2) of the BNS classifies murder committed by five or more persons acting in concert on grounds such as race, caste, community, sex, or personal belief as an aggravated offence, punishable with death, life imprisonment, or imprisonment for a minimum term of seven years along with fine. This provision marks a conceptual advancement by recognising the collective and discriminatory dimensions of lynching, aligning Indian criminal law with global trends that treat hate-based violence as aggravated criminality. Unlike the IPC, the BNS acknowledges that group violence motivated by prejudice poses a heightened threat to public order and constitutional morality.

Reform is therefore necessary on three fronts. First, Parliament should adopt a precise statutory definition of mob lynching that captures both physical violence and its hate-motivated or vigilante character. Second, the law must move beyond punitive provisions to include preventive and remedial mechanisms, including compensation schemes and witness protection. Finally, lynching should be integrated into a broader hate-crime framework that acknowledges structural discrimination and collective bias. Without such reforms, the BNS risks reducing mob

lynching to a sentencing enhancement rather than addressing it as a systemic failure of criminal justice and constitutional governance.

#### **IV Mob Lynching and the Imperative of Targeted Legislation**

##### **Tehseen Poonawalla Case and Judicial Instructions**

The increasing trend of mob lynching in India, especially in the context of cow vigilantism, has alarmed the adequacy of laws in addressing hate-motivated mob violence. The Supreme Court's ruling in *Tehseen S. Poonawalla v. Union of India*<sup>10</sup> (2018) dealt with this matter, instructing the state governments to immediately take steps to curb lynching and mob violence.

The Court suggested a series of guidelines, such as speedy investigations, the establishment of special tribunals for lynching, and the requirement of states to enact laws specifically to deal with lynching.

The case highlighted the inability of current legal provisions, including Section 149 IPC, to cope with the specific nature of lynching by mobs, which tends to be based on communal, religious, or ideological considerations<sup>11</sup>. The directives by the Court created the potential for legislative action to plug the lacuna in the law and provide quick justice to lynching victims.

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<sup>10</sup> *Poonawalla v. Union of India*, Writ Petition (Civil) No. 754 of 2017.

<sup>11</sup> A. Chaudhary, "Lynching and the Law: Judicial Guidelines and the Need for Reform" 26(3) *Indian Constitutional* 204-222 (2019).

## Comparative Perspective

In nations such as Bangladesh and South Africa, equivalent legal provisions against unlawful assembly have been reformed to meet the local challenges of mob violence. The Special Tribunal Act (2018) of Bangladesh and legislative measures against hate crimes in South Africa provide guidance on how the targeted use of law can be employed to stem mob violence without encroaching on justice principles. These changes, as opposed to India's current system, aim at increasing the state's capacity to prevent lynching and prosecute perpetrators effectively, without dependently relying on the doctrine of joint liability.

## Arguments in Favor of and Opposition to Special Anti-Lynching Legislation

Academics have argued for and against introducing special anti-lynching legislation. Supporters contend that such legislation would specifically deal with the special character of mob violence, wherein the combined action of the crowd, motivated by emotional or ideological stimuli, leads to the failure of law and order. Opponents warn against the enactment of too general legislation that may be susceptible to abuse or that may encroach upon personal rights. They contend that strengthening the capability of current legal infrastructure, including the BNS's Section 190, is the better solution to the issue of lynching, guaranteeing that joint liability shall be applied correctly and proportionately.

## **V Reconsidering Collective Liability: Moving Towards a Balanced Approach**

The doctrine of joint liability, as enshrined in Section 149 of the Indian Penal Code (IPC), has been the subject of much controversy. While it

seeks to hold people accountable for acts in common, there are serious doubts about its implementation in mob violence cases<sup>12</sup>. Joint liability in these circumstances frequently results in the conviction of the entire group of unlawful assembly persons without requiring proof of individual participation or intent.

It gives rise to serious questions of fairness, due process, and safeguarding individual rights. The requirement of a balanced approach in applying joint liability is more urgent now than ever in cases of group offenses such as mob violence, lynching, and vigilantism.

### Reforms in Prosecutorial Burdens and Evidentiary Standards

An important component of remedying the problem of joint liability is to reform evidentiary standards. Under Section 149, when the prosecution proves the existence of an unlawful assembly and a common object, it is presumed that all members are parties to the criminal act. But this presumption does not always square with the facts of group violence<sup>13</sup>.

In most cases, it is difficult for the prosecution to prove individual roles of participants in a mob, and circumstantial evidence is usually the sole way of associating an individual with the crime. This poses serious dangers of miscarriage of justice, particularly if the evidence does not differentiate between the ones actively involved in the crime and the ones who were just bystanders.

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<sup>12</sup> P.S. Bhagat, "Rethinking Joint Liability: Towards a Balanced Framework" 38(2) *Journal of Legal Reform and Justice* 128-145 (2019).

<sup>13</sup> N. Kumar, "Reforms in the Law of Joint Liability: A Call for Fairness" 42(3) *National Law Review* 79-93 (2020).

To counter this, reforms must be implemented to provide that the prosecution must meet a higher standard of proof. A requirement to distinguish between the extent of participation and the particular act of each should be made.

For instance, the use of direct evidence like witness statements or video recordings must be given greater importance than circumstantial evidence<sup>14</sup>. Also, the onus of establishing individual participation must not be unfairly shifted to the accused but should continue to rest with the prosecution, so that people are not unfairly convicted on the basis of guilt by association alone.

#### Protection of Fair Trial Rights

While reforming the law of joint liability, it is necessary to safeguard the fair trial rights of people. One of the fundamental tenets of criminal justice is that a person can be held accountable for a crime only if they have committed it themselves<sup>15</sup>.

A system of collective punishment, like the one described under Section 149, violates this tenet by assuming guilt on the basis of association and not individual action. This creates doubts about the possibility of wrongful convictions, particularly in instances where the evidence against a person is weak or circumstantial.

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<sup>14</sup> R. Khanna "Ensuring Fair Trials in Group Crimes: A New Approach" 50(1) *Law and Public Policy Journal* 100-117 (2018).

<sup>15</sup> A. Sharma, "Safeguards for Fair Trials: A Critical Look at Section 149 IPC" 36(4) *Legal Studies Quarterly* 184-200 (2019).

To meet these demands, measures need to be placed to ensure the prosecution must prove the active role of every accused in the illegal assembly and commission of the crime.

In addition, the legislation must specify that membership in an illegal assembly will not be enough to make someone liable under Section 149. These changes will restore the equilibrium between collective liability and individual justice.

### Recommendations for Legislative Clarity

Legislative reforms must clear up the ambiguity in interpreting Section 149. The law must issue precise instructions to the courts on how to proceed on the issue of joint liability in mob violence cases<sup>16</sup>. Legislative reforms, in particular, should:

1. *Provide more definite definitions of words such as "common object" and "unlawful assembly" to avoid their overly expansive application.*
2. *Clarify the standards of evidence needed to establish individual liability in collective crimes.*
3. *Demand a more subtle approach in establishing the level of participation of each member of the unlawful assembly.*

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<sup>16</sup> M. Vohra, *Indian Penal Code: Historical Overview and Current Issues* 342 (Satyam Law Publishers, Delhi, 3<sup>rd</sup> edn., 2018).

4. *Provide for increased judicial discretion to determine whether the role played by an individual in a mob was active or passive, and whether his/her participation was essential to the perpetration of the crime.*

These changes to the legislation would not only render the law more effective but also more equitable, in that they would ensure it reaches the perpetrators of mob violence without disproportionately punishing those who might not have been directly involved in the crime.

## **VI Conclusion**

Section 189 BNS is a law which addresses joint liability, and its application is the most crucial mechanism to address cases of group offenses, particularly mobs. Nevertheless, as illustrated within this paper, today's interpretation of this provision often results in unjust decisions, mainly in regards to determining responsibility on an individual basis within the context of group situations. The assumption of collective guilt on the basis of association with an illegal assembly erodes the values of individual responsibility and justice in the criminal justice system.

In resolving these challenges, it is evident that there must be a balanced solution—one that maintains the essential principles of justice yet still punishes those who take part in mob violence. Changing evidentiary requirements and making the burden of proof clear are essential steps toward finding that balance. By guaranteeing the prosecution's burden to prove individual involvement in a crime beyond a reasonable doubt, the law can more effectively protect the rights of the accused and prevent wrongful convictions.

Moreover, legislative clarification is imperative in the definition of major terms and articulation of the precise requirements for prosecuting perpetrators of mob violence. With more transparent guidelines, the law is able to offer a more uniform and fair paradigm of dealing with unlawful gatherings and mob crimes.

Last, the problem of mob lynching brings to fore the inadequacies of Section 189 as it stands. The lack of specific anti-lynching laws makes the prosecution of lynching perpetrators an uphill task. The inclusion of specialized laws along with judicial guidance for prosecuting acts of mob violence would assist in establishing a strong legal framework against such crimes.

Finally, the quest for justice in instances of mob violence needs a balanced appreciation of collective liability. The existing mechanism under the BNS needs to be re-checked and revamped so that it becomes adequate enough to respond to the needs of fairness, justice, and constitutional morality. It is only through such changes that the judiciary can restore people's faith in its capability to penalize people for their wrongs while safeguarding the interests of the accused.