

THE ILLUSION OF DETERRENCE: STATUTORY GAPS, THE "CULTURAL DEFENCE," AND THE PROSECUTION OF HONOUR CRIMES IN INDIA

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ABSTRACT

This research paper critically evaluates the systemic implementation failures of India's criminal justice framework in addressing collective violence, specifically mob lynching and honour killings, against the backdrop of the newly enacted Bharatiya Nyaya Sanhita (BNS), 2023. Despite sweeping federal legislative overhauls, these structural crimes persist due to deep-seated socio-cultural biases, institutional reluctance, and stark statutory ambiguities.

The study highlights how police apathy, the deliberate dilution of First Information Reports (FIRs) to obscure hate motives, and the pervasive intimidation of witnesses culminate in statistically alarming acquittal rates. Furthermore, the paper analyses the deeply flawed judicial application of the "grave and sudden provocation" doctrine. This legal principle frequently operates as a "cultural defence" that mitigates murder charges in honour crimes, legally normalizing patriarchal violence while paradoxically failing to protect female victims of sustained domestic abuse.

By contrasting progressive state-level legislative experiments in Rajasthan and Karnataka which were ultimately paralyzed by federal constitutional vetoes with the overarching BNS framework, the analysis exposes critical statutory gaps. Notably, Section 103(2) of the BNS introduces a highly flawed five-person threshold for mob lynching and entirely omits the preventive, remedial, and victim-compensation mandates previously ordered by the Supreme Court in the landmark Tehseen S. Poonawalla judgment.

Ultimately, the paper concludes that relying on general penal provisions to prosecute organized, identity-driven violence emboldens a culture of majoritarian impunity. It recommends fundamental systemic overhauls, including eliminating arbitrary numerical thresholds in the BNS, statutorily codifying "sustained provocation," and rigidly integrating Supreme Court guidelines to effectively dismantle vigilante justice.

1.1 Introduction to the Implementation Paradigm

The transition from colonial-era criminal jurisprudence to a modernized Indian legal framework, ostensibly aimed at decolonizing justice, has brought profound structural shifts to

the forefront of the Indian penal system.¹³⁹⁵ The enactment of the Bharatiya Nyaya Sanhita (BNS), 2023, the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, and the Bharatiya Sakshya Adhinyam (BSA), 2023, which came into effect in July 2024, represents a watershed moment intended to pivot the system from a

¹³⁹⁵ Government of India, *Paper on Implementation of Three Criminal Laws* (Ministry of Home Affairs, 2024).

purely punitive model to a justice-centric paradigm.¹³⁹⁶ However, the manifestation of collective violence specifically mob lynching and honour-based crimes exposes severe systemic inadequacies that persist despite these sweeping legislative overhauls and a decade of landmark judicial interventions.¹³⁹⁷ The dichotomy between the constitutional guarantees of the right to life, equality, and personal liberty under Articles 14, 15, 19, and 21 of the Constitution of India, and the stark ground realities of vigilante justice, reveals a criminal justice system struggling with institutional reluctance, deep-seated socio-cultural biases, and glaring statutory ambiguities.¹³⁹⁸

Mob lynching and honour killings are not merely aberrations of law and order; they are structural crimes rooted in the assertion of dominant social, caste, and religious hierarchies.¹³⁹⁹ Lynching, often driven by majoritarian vigilantism, and honour killings, driven by deeply entrenched patriarchal and caste-based endogamy, both operate on the premise of extrajudicial community "justice".¹⁴⁰⁰ This Research paper critically evaluates the implementation failures that plague the prosecution of these crimes in India. It systematically analyses police apathy and complicity, the pervasive intimidation of witnesses, and the subsequent low conviction rates that embolden perpetrators and normalize a culture of impunity.¹⁴⁰¹ Furthermore, it investigates the continued judicial and societal reliance on the cultural defence of "grave and sudden provocation," a legal doctrine that frequently mitigates the severity of honour killings and legally rationalizes patriarchal violence.¹⁴⁰²

¹³⁹⁶ *Id.*

¹³⁹⁷ Ruchira Chunekar, "Mob Lynching: A Blot on Constitutional Values" 4 *JLRJS* 1460 (2025).

¹³⁹⁸ *Id.* at 1461.

¹³⁹⁹ Ketki Patwardhan, "Honour Killings in India: Evidentiary Hurdles" 30 *Kuey* 16 (2024).

¹⁴⁰⁰ *Id.*

¹⁴⁰¹ Aishwarya Vucha, "The Shield of Themis: Witness Protection in India" *IJLLR* 5 (2024).

¹⁴⁰² Moeen Cheema, "Judicial Patronage of 'Honor Killings' in Pakistan: The Supreme Court's Persistent Adherence to the Doctrine of Grave and Sudden Provocation" 27 *N.M. L. Rev.* 101 (2010).

By contrasting progressive state-level legislative experiments such as the Rajasthan Bills of 2019 and Karnataka's recent 2025 and 2026 proposals against the overarching federal framework of the newly enacted Bharatiya Nyaya Sanhita (BNS), this analysis highlights critical gaps in preventive mandates, witness protection mechanisms, and state-sponsored data collection.¹⁴⁰³ Ultimately, the evaluation underscores the enduring friction between progressive judicial directives, such as the comprehensive Supreme Court guidelines in *Tehseen S. Poonawalla v. Union of India* and *Shakti Vahini v. Union of India*, and the entrenched socio-political realities that systematically stall their execution at the grassroots level.¹⁴⁰⁴

1.2 Implementation Failures: Police Reluctance, Witness Intimidation, and Low Conviction Rates

The efficacy of any criminal legislation relies intrinsically on the administrative and investigative machinery responsible for its enforcement. In the context of mob lynching and honour killings, the investigative and prosecutorial apparatus frequently exhibits systemic paralysis. This institutional failure is not merely a consequence of resource deficits or bureaucratic inefficiency; it is often symptomatic of socio-political compliance, majoritarian appeasement, and structural prejudice that infects the lowest rungs of law enforcement up to the prosecutorial echelons.¹⁴⁰⁵

1.2.1 Police Reluctance and Institutional Bias

At the foundational level of the criminal justice process, police reluctance significantly hampers the pursuit of justice for victims of collective violence. Empirical observations and judicial reprimands consistently highlight a pattern of delayed First Information Report (FIR)

¹⁴⁰³ "Anti-mob lynching bills passed by 4 assemblies at various levels of non-implementation", *The Hindu*, Feb. 16, 2022.

¹⁴⁰⁴ *Tehseen S. Poonawalla v. Union of India*, (2018) 9 SCC 501; *Shakti Vahini v. Union of India*, (2018) 7 SCC 192.

¹⁴⁰⁵ Jindal Global Law School Legal Clinic, "The Epidemic of Mob Lynching in India: Deploying Police Discretion" (2022).

registrations, the deliberate dilution of penal charges, and the disturbing phenomenon of "cross-filing" against the victims themselves.¹⁴⁰⁶ In cases of mob lynching, particularly those driven by cow vigilantism, law enforcement officials frequently exercise their discretionary powers to construct narratives that obscure the element of hate or collective premeditation.¹⁴⁰⁷

The structural framing of investigations often undermines the core objectives of criminal law. For instance, empirical research conducted by legal clinics examining hate crime investigations reveals that police officials routinely deploy official discretion to invisibilize the hate-based nature of lynchings.¹⁴⁰⁸ Officers often register cases of mob murder under general provisions of homicide or rioting, deliberately avoiding statutory recognitions of collective identity-based violence.¹⁴⁰⁹ In numerous documented incidents across Uttar Pradesh, Rajasthan, and Haryana, the police have recorded killings by vigilante mobs as standard murders or even accidental deaths. A glaring example occurred in December 2024 in Moradabad, Uttar Pradesh, where a laborer was lynched over allegations of cow slaughter. Despite video evidence of the mob assault, the police refused to invoke specific mob lynching charges, claiming the offense was "not made out," and instead filed cases against the deceased victim under the Uttar Pradesh Prevention of Cow Slaughter Act.¹⁴¹⁰

Furthermore, police personnel are often accused of remaining passive spectators during the commission of violence or arriving at the crime scene only after fatal injuries have been inflicted.¹⁴¹¹ In the tragic case of Pehlu Khan (2017), police delayed filing FIRs and systematically failed to collect crucial forensic

and video evidence properly, eventually leading to the acquittal of the primary accused.¹⁴¹² In other high-profile cases, such as the lynching of Rakbar Khan, witnesses and judicial inquiries revealed that slothful police action, including stopping for tea while the victim bled in the police vehicle, played a pivotal role in the victim's death, illustrating a severe and fatal dereliction of duty.¹⁴¹³

1.2.2 The Mechanics of Witness Intimidation and Community Collusion

The adversarial nature of the Indian legal system places an overwhelming reliance on the oral testimonies of eyewitnesses. However, in cases of honour killings and mob violence, the phenomenon of witnesses turning hostile remains a primary catalyst for the abysmal conviction rates in the country.¹⁴¹⁴ According to surveys conducted by civil rights enforcement agencies, hostile witnesses account for the collapse of over a quarter of all prosecutions in grave offences.¹⁴¹⁵ The intimidation of witnesses is not an isolated event but a continuous, systemic process that exploits the vulnerabilities of the criminal justice system and the socio-economic asymmetry between the perpetrators and the victims.

In mob lynching incidents, the dynamics of intimidation operate on a massive scale. The sheer numerical superiority of the mob, often backed by local political patronage, instills a pervasive fear of retaliation within the minority community.¹⁴¹⁶ Witnesses are acutely aware that testifying against politically or socially dominant groups may result in economic disenfranchisement, the destruction of their property, or fatal retribution.¹⁴¹⁷ The protracted nature of criminal trials in India further exacerbates this vulnerability. Prolonged legal battles, which can drag on for decades, drain the financial resources of the victims' families and expose witnesses to sustained pressure.

¹⁴⁰⁶ *Id.*

¹⁴⁰⁷ *Id.*

¹⁴⁰⁸ *Id.* at 15.

¹⁴⁰⁹ *Id.*

¹⁴¹⁰ "Police empower cow vigilantes by ignoring new mob lynching law", *Article 14*, Jan. 16, 2025, available at: <https://article-14.com/post/police-empower-cow-vigilantes-by-ignoring-new-mob-lynching-law> (last visited Feb. 20, 2026)

¹⁴¹¹ Priyadarshree Mukhopadhyay, "The Epidemic of Mob Lynching in India: Analysing Tehseen S. Poonawalla v. Union of India" *Criminal Law Studies* NLJ (2020).

¹⁴¹² *Id.*

¹⁴¹³ *Id.*

¹⁴¹⁴ Aishwarya Vucha, *supra* note 7, at 7.

¹⁴¹⁵ *Id.* at 8.

¹⁴¹⁶ Ashish Pathak, "Anti Mob Lynching Bills" 7 *APLPR* 84 (2021).

¹⁴¹⁷ *Id.*

Under Section 309 of the CrPC (now updated in the BNSS), trials are meant to be expedited, but rampant judicial adjournments wear down the resolve of witnesses, ultimately leading to the erosion of evidence and the withdrawal of crucial testimonies.¹⁴¹⁸

1.2.3 Forensic Deficits, Evidentiary Burdens, and Acquittal Trends

The culmination of deliberate police reluctance, flawed FIRs, and witness intimidation is a statistically alarming rate of acquittals in collective violence cases. The inability to secure convictions is further compounded by severely inadequate forensic capabilities. In rural and semi-urban jurisdictions where many of these crimes occur, the collection and preservation of scientific evidence such as blood spatter analysis, digital footprints, weapon recovery, and video forensics are routinely botched.¹⁴¹⁹ Video evidence, often filmed by the perpetrators themselves as an act of bravado, is frequently dismissed in court due to the prosecution's failure to adhere to the strict certification requirements for electronic evidence (formerly Section 65B of the Indian Evidence Act).¹⁴²⁰ Without robust corroborative forensic evidence, courts are forced to rely entirely on oral testimonies, which collapse under cross-examination or hostility.

Moreover, establishing the legal doctrine of "common intention" or "unlawful assembly" (historically under Sections 34 and 149 of the IPC) poses a significant legal hurdle in lynching cases.¹⁴²¹ Establishing that a spontaneous, chaotic mob shared a premeditated intent to commit murder is legally complex. Defense counsels successfully dismantle prosecution narratives by arguing that the fatal blow cannot be attributed to a specific individual within the crowd, and that the crowd did not share a unified murderous intent. Consequently, perpetrators are either acquitted entirely or convicted on heavily diluted charges of simple

hurt (Section 323 IPC) or rioting (Section 147 IPC), drastically reducing the overall conviction rates for the core offense of murder.¹⁴²² This systemic inability to punish collective violence effectively replaces the rule of law with mob justice, deeply fracturing the democratic fabric of the nation.¹⁴²³

1.3 The Cultural Defence: "Grave and Sudden Provocation" in Honour Crimes

A critical juncture where the Indian penal framework intersects with regressive socio-cultural norms is the judicial application of the "grave and sudden provocation" doctrine. This legal principle, inherited from colonial English common law, operates as a partial defence, mitigating the primary charge of murder to culpable homicide not amounting to murder.¹⁴²⁴ While theoretically designed as a humane concession to human frailty and the loss of self-control, its application in the context of honour crimes in India frequently functions as a judicially sanctioned "cultural defence" that legally normalizes patriarchal violence against women and marginalized groups.¹⁴²⁵

1.3.1 Legal Architecture and the 'Reasonable Man' Standard

Under Exception 1 to Section 300 of the Indian Penal Code (mirrored precisely in Section 101 of the Bharatiya Nyaya Sanhita, 2023), culpable homicide is not murder if the offender causes death whilst deprived of the power of self-control by grave and sudden provocation.¹⁴²⁶ To successfully invoke this statutory exception, the defense must establish a rigorous chain of events: the provocation must be both grave and sudden; the offender must have genuinely lost self-control; and the fatal act must have occurred during this state of psychological deprivation, before self-possession or a "cooling-off" period could return.¹⁴²⁷

¹⁴¹⁸ The Bharatiya Nagarik Suraksha Sanhita, 2023 (Act 46 of 2023), s. 346.

¹⁴¹⁹ Ruchira Chuneekar, *supra* note 3, at 1463.

¹⁴²⁰ The Indian Evidence Act, 1872 (Act 1 of 1872), s. 65B.

¹⁴²¹ The Indian Penal Code, 1860 (Act 45 of 1860), ss. 34, 149.

¹⁴²² Priyadarshie Mukhopadhyay, *supra* note 20.

¹⁴²³ Ruchira Chuneekar, *supra* note 3, at 1464.

¹⁴²⁴ *K.M. Nanavati v. State of Maharashtra*, AIR 1962 SC 605.

¹⁴²⁵ Moeen Cheema, *supra* note 8, at 103.

¹⁴²⁶ The Bharatiya Nyaya Sanhita, 2023 (Act 45 of 2023), s. 101.

¹⁴²⁷ *K.M. Nanavati*, *supra* note 38.

The judiciary relies extensively on the objective "reasonable man" standard to determine whether a specific provocation was sufficiently grave. In the landmark jurisprudence of *K.M. Nanavati v. State of Maharashtra* (1961), the Supreme Court held that the test must ascertain whether a reasonable person belonging to the *same socio-cultural class* as the accused, placed in a similar situation, would be so provoked as to lose their self-control.¹⁴²⁸ This subjective socio-cultural layering of the "reasonable man" test allows deeply entrenched patriarchal values and regressive notions of "family honour" to infiltrate the courtroom.¹⁴²⁹

When a male relative murders a female family member upon discovering her in an unapproved inter-caste relationship, eloping, or asserting her sexual autonomy, defense counsels routinely argue that the sight constituted a sudden, soul-stirring provocation that justified the violent outburst.¹⁴³⁰ By arguing that in their specific rural or caste-based society, female autonomy brings unbearable shame, perpetrators exploit the "reasonable man of the same class" caveat. Consequently, lower courts have, on multiple occasions, accepted this cultural rationale, reducing cold-blooded honour executions to lesser crimes, thereby rewarding the perpetrator with significantly lighter prison sentences.¹⁴³¹

1.3.2 Sustained Provocation versus Suddenness: A Gendered Paradox

The strict statutory requirement of "suddenness" presents a profound gendered paradox in Indian criminal law, particularly when contrasting domestic abuse with honour crimes. The law requires an immediate, explosive reaction to the provocation.¹⁴³² In cases where female victims of prolonged, horrific domestic abuse finally retaliate and kill

their abusers, the law's rigid insistence on the absence of a "cooling-off period" prevents them from utilizing the provocation defense. The courts often view the woman's retaliation as premeditated, ignoring the psychological reality of Battered Woman Syndrome and the concept of a "slow burn" of trauma.¹⁴³³

The Supreme Court's ruling in *B.D. Khunte v. Union of India* (2015) perfectly illustrates the rigidity of the suddenness requirement.¹⁴³⁴ The Court rejected the plea of provocation for an individual who suffered sustained abuse, because a few hours had elapsed between the final abusive incident and the retaliatory killing. The Court deemed this sufficient time for passions to cool and self-control to return. This strict temporal adherence fails to account for the psychological realities of sustained trauma or the complex, simmering anger tied to perceived familial dishonour. While the Supreme Court has recently attempted to validate the concept of "sustained provocation" in cases like *Dauvaram Nirmalkar v. State of Chhattisgarh*, acknowledging that the history of abuse must be considered alongside the final provocative act, the lack of formal statutory codification in the BNS renders its application highly inconsistent and subject to the whims of individual judges.¹⁴³⁵

1.3.3 Judicial Attempts to Stamp Out the Cultural Defence

Recognizing the egregious misuse of the provocation doctrine to shield perpetrators of cultural crimes, the higher judiciary has attempted to strictly demarcate honour killings from acts of sudden passion. In the watershed judgment of *Bhagwan Dass v. State (NCT of Delhi)* (2011), the Supreme Court explicitly addressed the cultural defence, definitively categorizing honour killings as "barbaric, cold-blooded murders" devoid of any honour.¹⁴³⁶ The Court unequivocally stated that the perceived

¹⁴²⁸ *Id.*

¹⁴²⁹ "Indian Judicial Approach to the 'Reasonable Man' Standard in the Defence of Grave and Sudden Provocation", *IJLLR* 12 (2024).

¹⁴³⁰ *Id.*

¹⁴³¹ *Id.* at 14.

¹⁴³² Dil Prithviraj Sen, "When Provocation Lingers", *Vidhi Centre for Legal Policy* (2024).

¹⁴³³ "Grave and sudden provocation: Revisiting *R v. Ahluwalia*", *Int. Ann. Crim.* 45 (2023).

¹⁴³⁴ *B.D. Khunte v. Union of India*, (2015) 1 SCC 286.

¹⁴³⁵ *Dauvaram Nirmalkar v. State of Chhattisgarh*, (2022) 9 SCC 251.

¹⁴³⁶ *Bhagwan Dass v. State (NCT of Delhi)*, (2011) 6 SCC 396.

loss of family prestige does not constitute a legal justification or a valid provocation for murder. The bench ruled that honour killings fall squarely within the "rarest of rare" category, warning that "the gallows await" those who perpetrate such crimes, intending to establish a severe deterrent.¹⁴³⁷

1.4 State-Level Legislative Experiments and Inter-Ministerial Limbo

In the absence of comprehensive federal statutes specifically defining and penalizing mob lynching and honour crimes, several state legislatures embarked on creating localized, targeted penal frameworks. These state-level experiments, primarily initiated between 2018 and 2021, offer valuable insights into the potential for robust, specialized legislation. However, they simultaneously highlight the constitutional and political bottlenecks that systematically impede the actualization of regional legal autonomy in India.

1.4.1 The Rajasthan Legislative Blueprint (2019)

In August 2019, the Rajasthan Legislative Assembly emerged as a pioneer by passing two distinct, stringent bills designed to curb collective violence: the *Rajasthan Protection from Lynching Bill, 2019*, and the *Rajasthan Prohibition of Interference with the Freedom of Matrimonial Alliances in the Name of Honour and Tradition Bill, 2019*.¹⁴³⁸

The Anti-Lynching Bill was meticulously drafted to align with the Supreme Court's directives in *Tehseen Poonawalla*. It provided a concrete statutory definition of "lynching" as any spontaneous or planned act of violence by a mob (defined stringently as two or more individuals) targeting an individual based on religion, race, caste, sex, place of birth, dietary practices, or sexual orientation.¹⁴³⁹ The penal provisions were extraordinarily severe, mandating rigorous life imprisonment and fines

up to ₹5 lakh for lynchings resulting in death.¹⁴⁴⁰ Crucially, the Bill went beyond mere physical violence; it criminalized the creation of a "hostile environment" (such as social boycotts, eviction, or denial of public services) and the dissemination of offensive, inciting material.¹⁴⁴¹ It also institutionalized the appointment of Nodal Officers (not below the rank of Inspector General of Police) to prevent incidents, mandated the establishment of victim relief camps, and outlined heavy compensation schemes.¹⁴⁴²

1.4.2 Karnataka's Legislative Trajectory (2025–2026)

Following the template set by Rajasthan, Manipur, and West Bengal, the Karnataka government initiated its own legislative interventions to combat collective violence and identity-based hate. In late 2025, the state passed the *Karnataka Hate Speech and Hate Crimes (Prevention) Bill*, establishing clear definitions for hate speech and imposing collective liability on organizations propagating communal disharmony.¹⁴⁴³ The Bill prescribes imprisonment of up to seven years and specifically empowers designated officers to compel service providers and intermediaries to block or remove incendiary electronic content, addressing the modern reality of WhatsApp-fueled lynch mobs.¹⁴⁴⁴

Building on this momentum, in early 2026, Karnataka drafted the *Freedom of Choice in Marriage and Prevention and Prohibition of Crimes in the Name of Honour and Tradition Bill* (colloquially titled "Iva Nammava, Iva Nammava").¹⁴⁴⁵ This draft legislation represents a sophisticated evolution in protective law. It explicitly reaffirms that the fundamental rights under Articles 14, 19, and 21 extend to the choice

¹⁴⁴⁰ *Id.*, s. 8.

¹⁴⁴¹ *Id.*, s. 15.

¹⁴⁴² *Id.*, ch. VII.

¹⁴⁴³ The Karnataka Hate Speech and Hate Crimes (Prevention) Bill, 2025 (Bill 79 of 2025), s. 2.

¹⁴⁴⁴ *Id.*, s. 6.

¹⁴⁴⁵ "Honour killings punishable with 5 yrs in Karnataka draft bill", *NewsLaundry*, Jan. 17, 2026, available at: <https://www.newslaundry.com/2026/01/17/honour-killings-punishable-with-5-yrs-in-karnataka-draft-bill-couples-offered-protection> (last visited Feb. 20, 2026).

¹⁴³⁷ *Id.* at para 28.

¹⁴³⁸ "Bills against lynching, honour killing introduced in Rajasthan", *The Hindu*, Aug. 5, 2019.

¹⁴³⁹ The Rajasthan Protection from Lynching Bill, 2019 (Bill 22 of 2019), s. 2.

of a marital partner, completely insulating couples from familial, societal, and bureaucratic interference. The Bill recognizes endogamy as a structural tool of oppression, mandates the state government to establish safe houses at all district headquarters, and proposes the creation of dedicated fast-track courts specifically for the rapid trial of honour crimes.¹⁴⁴⁶

State & Legislation	Key Penal Features & Thresholds	Preventive & Remedial Mechanisms
Rajasthan Protection from Lynching Bill (2019)	Life imprisonment for fatal lynching; "Mob" defined as 2+ persons; criminalizes "hostile environment". ¹⁴⁴⁷	DGP to appoint Nodal Officers; mandatory free medical aid; victim compensation scheme; relief camps. ¹⁴⁴⁸
Rajasthan Honour Killing Bill (2019)	Death penalty or life imprisonment for murder; penalizes unlawful assemblies. ¹⁴⁴⁹	Empowers district officials to prohibit khap gatherings; protects adult couples from intimidation. ¹⁴⁵⁰
Karnataka Hate Crimes Bill (2025)	1-7 years imprisonment for hate crimes; collective liability for organizations. ¹⁴⁵¹	Empowers officers to block electronic hate media; provides for adequate victim compensation. ¹⁴⁵²
Karnataka Honour	5+ years imprisonment	Mandates safe houses at

¹⁴⁴⁶ *Id.*

¹⁴⁴⁷ The Rajasthan Protection from Lynching Bill, 2019, *supra* note 55, ss. 2, 8.
¹⁴⁴⁸ *Id.*, ch. VII.

¹⁴⁴⁹ The Rajasthan Prohibition of Interference Bill, 2019, *supra* note 59, ss. 4, 6.

¹⁴⁵⁰ *Id.*

¹⁴⁵¹ The Karnataka Hate Speech and Hate Crimes (Prevention) Bill, 2025, *supra* note 62.

¹⁴⁵² *Id.*, s. 6.

Crimes Draft Bill (2026)	for coercion/threats; recognizes structural endogamy. ¹⁴⁵³	district levels; proposes designated fast-track courts for speedy trials. ¹⁴⁵⁴
West Bengal (Prevention of Lynching) Bill (2019)	Death penalty or life imprisonment for lynching victims to death. ¹⁴⁵⁵	Proposes the West Bengal Lynching Compensation Scheme. ¹⁴⁵⁶

1.4.3 The Constitutional Bottleneck and the Governor's Veto

Despite the robust and highly necessary legal architecture of these state-level bills, their implementation has been completely paralyzed by federal constitutional mechanisms. Bills passed by state legislatures addressing subjects in the Concurrent List of the Seventh Schedule (such as criminal law and criminal procedure) require Presidential assent under Article 200 of the Constitution if they are repugnant to or deviate from existing central laws.¹⁴⁵⁷

Consequently, the progressive bills passed by Rajasthan, West Bengal, and Jharkhand remained trapped in inter-ministerial consultation at the Union Home Ministry for years without clearance, rendering them dead letters on the ground.¹⁴⁵⁸ In January 2026, the constitutional bottleneck reached its zenith when the Rajasthan Governor formally returned the 2019 Honour Killing and Lynching Bills to the state assembly.¹⁴⁵⁹ The Governor's rationale highlighted a critical, overarching structural shift: the state drafts heavily referenced the Indian Penal Code (IPC), 1860, and the Code of

¹⁴⁵³ *Newslaundry*, *supra* note 64.

¹⁴⁵⁴ *Id.*

¹⁴⁵⁵ The West Bengal (Prevention of Lynching) Bill, 2019.

¹⁴⁵⁶ *Anti-mob lynching bills passed by 4 assemblies*, *supra* note 9.

¹⁴⁵⁷ The Constitution of India, art. 200.

¹⁴⁵⁸ *Anti-mob lynching bills passed by 4 assemblies*, *supra* note 9.

¹⁴⁵⁹ "Rajasthan Governor sends back Gehlot-era lynching, honour killing bills", *The Wire*, Jan. 30, 2026, available at: <https://thewire.in/politics/rajasthan-governor-sends-back-gehlot-era-lynching-honour-killing-and-other-bills-to-assembly> (last visited Feb. 20, 2026).

Criminal Procedure (CrPC), 1973, both of which had been repealed and replaced by the federal government in 2024. Furthermore, the Governor asserted that the newly enacted Bharatiya Nyaya Sanhita (BNS), 2023, contained adequate provisions (specifically Section 103) to address these crimes, thereby rendering the specialized, comprehensive state-specific laws redundant.¹⁴⁶⁰

1.5 Statutory Gaps in the Bharatiya Nyaya Sanhita (BNS) Framework

The enforcement of the Bharatiya Nyaya Sanhita (BNS) in July 2024 was heralded as a modernization of India's criminal statutes, aiming to shed colonial vestiges.¹⁴⁶¹ However, a critical evaluation of its approach to collective violence reveals profound statutory gaps. The new code has drawn severe criticism from legal scholars and civil rights groups for remaining superficial, diluting punishments, and completely lacking the intricate preventative mechanisms required to dismantle structural mob violence.¹⁴⁶²

1.5.1 The Ambiguities and Dilutions of Section 103(2)

The most significant addition regarding collective violence in the new code is Clause 103(2) of the BNS, which specifically criminalizes murder committed by a group acting in concert on identity-based grounds, including race, caste, community, sex, language, or personal belief.¹⁴⁶³ While formally acknowledging the distinct sociology of mob lynching is a step forward, the statutory construction presents formidable legal challenges that benefit perpetrators.

Firstly, the numerical threshold established by the BNS is deeply flawed. Clause 103(2) explicitly requires the involvement of a group of "five or more persons" to classify an act as a group-

targeted murder or mob lynching.¹⁴⁶⁴ This arbitrary baseline completely ignores the reality of vigilante violence and honour killings in India, which are frequently executed by smaller groups of two to four individuals.¹⁴⁶⁵ By elevating the threshold to five, the BNS allows smaller lynch mobs and honour crime perpetrators to escape the specific aggravating scrutiny intended by the clause. In contrast, progressive drafts like the *Manav Suraksha Kanon (MaSuKa)* and the Rajasthan 2019 Bill accurately defined a mob as "two or more individuals".¹⁴⁶⁶

1.5.2 The Complete Absence of Preventive and Remedial Mandates

A critical evaluation of the BNS reveals a glaring omission: it is almost exclusively punitive (focusing on post-facto punishment) and entirely devoid of the preventive architecture mandated by the Supreme Court. In the *Tehseen Poonawalla* judgment, the Supreme Court unequivocally recognized that mere penal statutes are insufficient to combat the spread of "mobocracy." The Court issued binding guidelines ordering the creation of a proactive surveillance framework.¹⁴⁶⁷ This included the mandatory appointment of Superintendent of Police (SP) rank Nodal Officers in every district, the mapping of vulnerable zones, and the establishment of intelligence task forces to actively monitor hate speech and fake news on social media platforms.¹⁴⁶⁸

Similarly, the BNS framework fails to codify remedial measures for the victims. There is no mention of statutory victim compensation schemes, immediate relief protocols, or mandatory medical assistance for survivors of collective violence.¹⁴⁶⁹ Furthermore, the code lacks provisions for the establishment of designated fast-track courts, leaving the victims of mob lynching and honour crimes at

¹⁴⁶⁰ *Id.*

¹⁴⁶¹ Government of India, *Paper on Implementation of Three Criminal Laws*, *supra* note 1.

¹⁴⁶² Ayush Agrawal and Shriyaditya Shrivastava, "Criminalisation of Mob Lynching under the Bharatiya Nyaya (Second) Sanhita, 2023" *NUALS L.J.* (2024).

¹⁴⁶³ The Bharatiya Nyaya Sanhita, 2023 (Act 45 of 2023), s. 103(2).

¹⁴⁶⁴ *Id.*

¹⁴⁶⁵ Ayush Agrawal and Shriyaditya Shrivastava, *supra* note 83.

¹⁴⁶⁶ National Campaign Against Mob Lynching, *Draft Protection from Lynching Act (MaSuKa)*, 2017, s. 2.

¹⁴⁶⁷ *Tehseen S. Poonawalla v. Union of India*, (2018) 9 SCC 501.

¹⁴⁶⁸ *Id.*

¹⁴⁶⁹ Ayush Agrawal and Shriyaditya Shrivastava, *supra* note 83.

the mercy of India's notoriously backlogged judicial system, where delayed justice invariably results in witness attrition and acquittals.¹⁴⁷⁰

1.5.3 Witness Protection: Structural Vulnerabilities in the BNSS

Recognizing the rampant collapse of prosecutions due to witness intimidation, the newly enacted Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, attempted to codify witness security. Section 398 of the BNSS represents a milestone by statutorily obligating all state governments to prepare and notify a comprehensive Witness Protection Scheme.¹⁴⁷¹ This integration theoretically transitions witness protection from a mere judicial guideline (as established in the 2018 *Mahender Chawla* case) to a binding legal mandate.¹⁴⁷²

1.5.4 The Data Collection Vacuum

Effective policy-making and targeted law enforcement rely heavily on accurate statistical data. However, the Indian criminal justice framework currently suffers from an epistemological void regarding collective violence. Following 2017, the National Crime Records Bureau (NCRB) entirely discontinued the collection and publication of separate, disaggregated data on mob lynching, cow vigilantism, and honour crimes.¹⁴⁷³

1.6 Judicial Directives Versus Ground Realities

The chasm between apex court jurisprudence and grassroots law enforcement is arguably the most debilitating aspect of India's response to collective violence. The Supreme Court has repeatedly issued binding, exhaustive directives intended to bypass legislative lethargy and establish an immediate protective framework, yet their implementation at the state and district levels remains negligible.

1.6.1 The Collapse of the *Poonawalla* and *Shakti Vahini* Guidelines

In 2018, the Supreme Court delivered twin judgments intended to serve as the bedrock for protecting vulnerable citizens. In *Shakti Vahini v. Union of India*, the Court recognized the absolute constitutional right of consenting adults to choose their partners, definitively declaring the actions of *Khap Panchayats* and other extra-constitutional assemblies illegal.¹⁴⁷⁴ The Court ordered the establishment of safe houses, special police cells, and immediate FIR registration against those intimidating inter-caste couples.¹⁴⁷⁵ Concurrently, *Tehseen S. Poonawalla v. Union of India* laid down the exhaustive preventive, remedial, and punitive matrix to combat "mobocracy," demanding nodal officers, fast-track courts, and disciplinary action against negligent police.

Despite these rulings carrying the absolute weight of law under Article 141 of the Constitution, state compliance is demonstrably poor. Compliance reports submitted by state governments are often superficial, and the mandated Nodal Officers frequently exist only on paper without the necessary resources or specialized task forces. The judiciary itself has noted this massive implementation failure. As recently as 2025, the Allahabad High Court, while hearing cases involving cow vigilantism, expressed grave alarm that "violence, lynching and vigilantism is the order of the day," directly castigating the Uttar Pradesh government for ignoring the *Poonawalla* directives.¹⁴⁷⁶

1.6.2 The Paradox of Interfaith Marriage Protections

The gap between judicial intent and ground reality is most starkly illustrated in the context of interfaith marriages, which are frequently the catalyst for severe honour-based violence. While the higher judiciary, including the Supreme Court in the *Hadiya* case, has repeatedly upheld the personal liberty of interfaith couples under Article 21, these judicial protections are structurally undermined by

¹⁴⁷⁰ *Id.*

¹⁴⁷¹ The Bharatiya Nagarik Suraksha Sanhita, 2023 (Act 46 of 2023), s. 398.

¹⁴⁷² *Mahender Chawla v. Union of India*, (2019) 14 SCC 615.

¹⁴⁷³ "Missing lynching data in NCRB report", *Shankar LAS Academy* (2019).

¹⁴⁷⁴ *Shakti Vahini v. Union of India*, (2018) 7 SCC 192.

¹⁴⁷⁵ *Id.*

¹⁴⁷⁶ *Rahul Yadav v. State of U.P.*, 2025 SCC OnLine All 123.

procedural complexities and contradictory state legislation.¹⁴⁷⁷

The *Special Marriage Act, 1954* (SMA), originally intended to facilitate secular, inter-religious marriages without requiring conversion, mandates a 30-day public notice period where the intended marriage is displayed in a "conspicuous place" at the registrar's office.¹⁴⁷⁸ In practice, this colonial-era provision acts as a fatal tool of surveillance. It exposes fleeing couples to familial tracking, social ostracism, and violent retribution by honour-centric mobs, defeating the very purpose of the secular law.¹⁴⁷⁹

Furthermore, the recent enactment of stringent anti-conversion laws, such as the *Uttar Pradesh Prohibition of Unlawful Conversion of Religion Act, 2021*, has drastically shifted the legal landscape against vulnerable couples. The Allahabad High Court has, in a series of judgments between 2023 and 2024, refused to grant vital police protection to fleeing interfaith couples, citing their failure to comply with the arduous procedural requirements of the anti-conversion law.¹⁴⁸⁰ Judges have ruled that interfaith marriages without proper, state-sanctioned religious conversion are illegal, effectively denying the couples their Article 21 right to protection from violent families.¹⁴⁸¹

1.7 Conclusions

The critical evaluation of India's criminal justice framework concerning mob lynching and honour crimes reveals a system characterized by profound implementation failures, legislative inadequacy, and deeply entrenched structural bias. The continued reliance on general penal provisions to prosecute highly organized, identity-driven collective violence allows perpetrators to evade proportional justice and normalizes majoritarian vigilantism.

The introduction of the Bharatiya Nyaya Sanhita (BNS), 2023, while formally acknowledging mob violence under Section 103(2), introduces detrimental numerical thresholds and sentencing disparities that severely dilute its deterrent capacity. By enabling courts to issue lesser sentences for premeditated mob murder than for individual homicide, the statute fundamentally fails the victims. Furthermore, by dismantling progressive, comprehensive state-level initiatives such as the Rajasthan Bills through constitutional vetos, without integrating their stringent preventive and remedial mechanisms into the federal code, the state has centralized the legal framework but hollowed out its protective efficacy.

The judiciary's ongoing struggle to eradicate the cultural defence of "grave and sudden provocation" underscores the deep entrenchment of patriarchal values within the investigative and trial processes. Until the doctrine of "sustained provocation" is statutorily codified to protect victims of prolonged abuse, and the exception is explicitly barred in cases involving consenting adult relationships, honour crimes will continue to be mitigated under the guise of lost self-control.

To bridge the vast chasm between constitutional guarantees and ground realities, fundamental systemic overhauls are required. The federal legislature must amend the BNS to eliminate the arbitrary five-person threshold for mob lynching and ensure the punishment aligns strictly with the severity of premeditated murder, removing the seven-year loophole. Furthermore, the *Tehseen Poonawalla* guidelines specifically the creation of autonomous intelligence task forces, strict penal accountability for police dereliction of duty, and mandatory victim compensation must be explicitly codified into the BNSS. Without dismantling the procedural mechanisms that enable witness intimidation and enforcing stringent, centralized data collection by the NCRB, the Indian criminal justice system will remain ill-equipped to counter the escalating

¹⁴⁷⁷ *Shafin Jahan v. Asokan K.M.*, (2018) 16 SCC 368.

¹⁴⁷⁸ The Special Marriage Act, 1954 (Act 43 of 1954), s. 6.

¹⁴⁷⁹ Alok Singh, "Special Marriage Act's Notice Regime and Judicial Denial of Protection", *Vidhi Centre for Legal Policy* (2024).

¹⁴⁸⁰ The Uttar Pradesh Prohibition of Unlawful Conversion of Religion Act, 2021.

¹⁴⁸¹ Areeb Uddin Ahmed, "How Procedure Upended Personal Liberty in Allahabad High Court's Refusal to Protect Interfaith Couples", *Article 14*, Feb. 2024.

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