
ASSESSING THE CRIMINALISATION OF NON-REPORTING OF OFFENCES: A STUDY OF COMPELLED SPEECH AND PERSONAL LIBERTY

Sushil Kumar Dixit, Assistant Professor, City Academy Law College, Lucknow (Affiliated to University of Lucknow)

ABSTRACT

The criminalization of the omission to report the crime in Indian law, which is largely reflected in the Sections 176, 202 and 203 of the Indian Penal Code, 1860 (IPC), along with procedural provisions in the Code of Criminal Procedure, 1973 (CrPC), creating an obligation on people to provide the police with information about their awareness of criminal activity, creates significant constitutional issues regarding the concept of compelled speech in Article 19(1)(a) and personal liberty in Article 21 of the Constitution of India. This study takes a strict doctrinal approach, which involves legislative exegesis, case-law studies, and comparative constitutional studies, to assess the underlining principles, judicial interpretation, and normative conflict underlying these laws. The intention is to question the legality of these criminal penalties in a rights-based approach, predicting how they encumber affirmative speech requirements that could violate the right to choose and make personal decisions independent to the right to silence. The key results indicate that, despite the noble purposes of the statutes, including detection of crimes and protection of people, they often fail to comply with the proportionality doctrine manifested through the lack of necessity and adequacy, especially in cases where non-serious crimes are committed or involved by non-citizens. Special attention is paid to such cases as the Protection of Children from Sexual Offences (POCSO) Act, 2012, where the mandatory reporting conflicts with the rights to privacy in the cases of child protection. The study assumes that the reform of legislation, including the limitation of the application to the serious crimes and the inclusion of the safeguards like the anonymity, is necessary to harmonize the roles of government and the fundamental rights.

Keywords: Coerced Speech, Non-Reporting Offences, Personal Liberty, Proportionality Test, POCSO.

Introduction

Historical Origins and Foundations of Colonialism

The law of reporting crimes in India can be traced to the colonial requirements under the Indian Penal Code of 1860 (IPC) that was organized by the committee of Lord Macaulay to standardize the British criminal law to be effectively administered to a heterogeneous subcontinent. In reaction to common robbery, thuggee syndicates and insurrectionist activity, Section 202 of the IPC gives an opportunity to judicial supervision: “Whoever, having known or having reason to know, that any crime punishable by imprisonment of five years and upwards, he intentionally omits to give information as to that crime of which he is legally liable, shall be liable to imprisonment, either of the two descriptions, or to a fine, or to both. This clause was aimed at the legally bound individuals, who were the public officials, the village leaders, or the informants bound by contract, and so was a paternalistic state which had to depend on the local cooperation to overcome the community reticence.

Moreover, the provision of Section 176 of IPC deals with the omission to inform the public servants of any significant events like unnatural deaths, fires, or cognizable offense, which carries a punishment of outdated fines (up to 40 rupees in minor cases) to a six-month or one-year imprisonment in case it is accompanied by any serious crime.¹ Section 202 (delay of process by a magistrate to allow an investigation) and Section 203 (dismissal due to insufficient reasons) in the Code of Criminal Procedure, 1882 (since replaced in 1973 by the CrPC) confirmed the need to make accurate disclosures to prevent the abuse of legal processes. The colonial rule was more about the intelligence of the state than the rights of the individual, which later was challenged in the post-independence era when constitutionalism promoted the rights of the ordinary people.²

The structure has become modernized and has been amended in 1923, notably by the death reporting -enhancing amendments, and continues as the omission fines with BNS time limits (e.g., three days to investigate). There is this continuity that highlights a conflict between colonial imposition and post-Emergency (1975-1977) rights jurisprudence.

¹ Indian Penal Code, No. 45 of 1860, §§ 52, 176, 201, 202 (India).

² Code of Criminal Procedure, 1973, §§ 202–203

Facts and Relevant Truths

These provisions are elucidated by empirical data. Under-reporting rates of 50+ 60 + according to the National Crime Records Bureau (NCRB),³ across various types of crime, especially gender-based violence are always higher due to fear of retaliation, police apathy, shame, family complicity and societal mistrust. Incidences of notable cases, unreported suicides being disguised as natural deaths, honour killings in community settings, and omission by teachers under the Protection of Children from Sexual Offences (POCSO) Act, 2012 Section 19, have proven the lack of enforcement that is justified and expose the abundance.

The liability includes the governmental authorities (e.g., police under Section 176), professional ones (doctors required by POCSO, not less than 6 months to 5 years of heavy imprisonment, not bailable in case of recurrence), and in some cases, even common spectators with visible ties. Ethical aspects are compounded by family situations: when a husband or wife hides the information about the beating, it forces two ethical duties associated with family and the state, repeating the story of Antigone. It is so because of the recent introduction of the BNS, which became effective July 2024; the increase in FIRs according to the NCRB 2024 is 10% as a result, however, the number of convictions pursuant to Section 202 is low, due to the presence of evidentiary issues regarding mens rea and the legal binding conditions. Intensive laws like POCSO Section 19 (mandatory reporting as soon as possible) and the Narcotic Drugs and Psychotropic Substances/Wildlife Acts worsen the situation, in some cases without a proportionality safeguard.

Regulatory Framework of Non-Disclosure Obligations: Key Statutory Rule 176 and 202 under the IPC

The key to this issue is the well-crafted misdemeanour of IPC Section 202, punishable for wilful failure to furnish information about an offence one is under a legal obligation to report; under this provision, a term not exceeding six months' imprisonment, or a fine, or both, may be imposed. Stated in legal terms, it requires three cumulative elements: (1) knowledge or reasonable belief—*mens rea*, which entails subjective awareness beyond mere suspicion or negligence, as explained in *State v. Ram Autar (Allahabad HC, 2015)*⁴. Passive awareness notwithstanding duty does not require a deliberate *actus reus* (intentional omission), but it does

³ Nat'l Crime Records Bureau, Crime in India 2024

⁴ State v. Ram Autar (All. H.C. 2015)

require that the *actus reus* be statutory (e.g., a duty arising from a position of authority) or contractual (not merely a moral or ethical duty).

The punishment (six months, fine), when read with Section 201 (causing disappearance of evidence or giving false information), it may extend to a maximum of 10 years in serious offences. Section 176 of the IPC differentiates omissions in informing public servants: minor omissions (such as failure to report a fire or disaster affecting the public) incur outdated fines (up to 40 rupees, rarely enforced due to inflation), while omissions linked to cognizable offences attract six months' imprisonment (for simple omissions) or one year (for aggravated omissions). These provisions historically applied to colonial-era functionaries such as patwaris or station house officers.⁵

Procedural Reinforcement: CrPC/BNSS 202-203

The Code of Criminal Procedure, 1973 (CrPC) facilitates reporting through Section 202 (postponement of process by a Magistrate to inquire into the validity of complaints, especially in non-cognizable cases) and Section 203 (dismissal where no prima facie case is made out after inquiry). This duo requires accurate disclosure: non-reporting may appear insignificant but threatens procedural integrity, and non-disclosure impedes justice. Section 154 of the CrPC⁶ provides that a First Information Report (FIR) must be registered for cognizable offences, as affirmed in *Lalita Kumari v. Government of U.P.*, (2014) 2 SCC 1. Section 157, concerning the forwarding of a report of the case to a Magistrate, complements this framework.⁷

These provisions are now reflected in the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), under Sections 173 (FIR) and the analogues of Sections 202–203. Improvements under the BNSS—such as digital FIRs and zero-FIR portability—are expected to ease reporting while retaining penalties for omissions.

Special Statutory Regimes: POCSO, NDPS and others Obligations

In Rule 19, POCSO Act, 2012,⁸ it is stipulated that any individual who knows about children sexual offences committed against a person under the age of 18 years must report the matter to

⁵ Indian Penal Code, 1860, §§ 176, 202

⁶ Code of Criminal Procedure, 1973, § 154

⁷ Bharatiya Nagarik Suraksha Sanhita, 2023

⁸ POCSO Act, 2012, §§ 19–21

the police or special juvenile divisions as soon as possible. Section 21 (1) provides a minimum period of six months up to five years of harsh imprisonment in non-bailable offences including repeat offences. Professionals, including physicians and teachers are more scrutinized, and their mens rea is not tolerated. Similarly, the NDPS Act, 1985 in Section 29,⁹ punishes the failure to report about narcotics offences by informants, but in the Wildlife Protection Act, 1972, the poaching accidents must be reported¹⁰. This is the pragmatism of legislation: empirical under-reporting (NCRB 2024: more than 60 per cent of child/gender crimes) must be increased but will be subject to over-breadness claims.

Scope, Exemption and Jurisdictional Differences

It is restricted to cognizable crimes, that is, those attracting a sentence of more than five years under Section 202. Common persons are rarely held liable unless in a specific legal relationship; mere bystanders, even relatives, are generally not covered. *Mens rea* excludes liability for mere carelessness (*Vijay Kumar v. State*, Delhi HC, 2018). There are several exceptions: spousal privilege (Evidence Act, Section 122—confidentiality of communications, which may be overridden by consent or compelling interests such as serious offences); professional secrecy (attorney–client, doctor–patient, though limited in cases of grave crimes); and good faith immunity (IPC Section 52—protection for acts done in good faith).

It is characterized by jurisdictional flexibility: reporting may be made to the nearest Magistrate or police officer; the BNSS framework on non-cognizable offences (2025) aims to simplify preliminary complaints. As a driving factor, NCRB 2024 reports indicate a 10-percentage-point rise in FIRs after the BNS, whereas only a marginal (less than 1-percentage-point) increase in Section 202 convictions is observed, largely due to the difficulty of proof.

Historical Development: The Colonial Legislation to BNS Reform

The provisions changed, introduced in 1860 when eradicating thuggee, when Macaulay comments on the incentive of informants, the amendments of 1923 sharpened the death-reporting, the 1980s amendments of the CrPC codified FIRs (Lalita Kumari) and in the antecedents of POCSO,¹¹ the silence of children was addressed. The BNS 2023 decriminalises

⁹ NDPS Act, 1985, § 29

petty thefts (Section 303 pre-BNS) but has very strict reporting requirements (Section 125: public servant omissions), which solves the NCRB underreporting problem, but fits the ease of justice narrative. BNS times overcome the times; however, the colonial overtones follow - there is no more improvement of punishments, which choke the confessions of families.

Constitutional Aspects

Forced Speech in Article 19(1)(a): Theoretical Ground Design and Doctrinal Evolution

Article 19(1)(a) guarantees the freedom of speech and expression, and courts have extended this to include its negative aspect—the right to silence—as essential to expressive freedom. In *Bijoe Emmanuel v. State of Kerala, (1986) 3 SCC 615*, the Court exempted Jehovah's Witness students who refused to sing the national anthem; Chief Justice Pathak held that there was no compulsion to sing, and therefore silence fell within the protective ambit of freedom of expression. This aligns with the doctrine against compelled speech, reflected in *Odyssey Communications Pvt. Ltd. v. Lokvidyan Sanghatana, (1988) 3 SCC 410*, where state-imposed broadcast obligations were treated as burdens on voluntary expression.

The non-reporting provisions invert the framework of Article 19(2). Rather than restricting speech, Sections 176/202 of the IPC (BNS Sections 125/176) compel individuals to disclose information, effectively turning omissions into “speech by default.” This may discourage potential whistle-blowers by imposing unclear standards such as “reason to believe,” and raises concerns under the overbreadth and vagueness doctrines articulated in *Shreya Singhal v. Union of India, (2015) 5 SCC 1*, where Section 66A of the IT Act was struck down for vagueness. The doctrine also draws from U.S. First Amendment jurisprudence, particularly *West Virginia State Board of Education v. Barnette, 319 U.S. 624 (1943)*, which prohibits compelled speech such as forced flag salutes, though India applies a proportionality-based approach.

From pre-Independence limitations (*e.g., Sakal Papers v. Union of India, AIR 1962 SC 305*, where price–page restrictions were struck down) to the digital era: in *Union of India v. Motion Picture Association, (1999) 1 SCC*, mandatory film exhibition requirements were invalidated; challenges to the IT Rules fact-checking mechanism (*Union of India, WP(C) 13/2021, Delhi HC, divided opinion*) have similarly raised concerns about burdens on expression. The right to silence is further reinforced in criminal jurisprudence, including *Nandini Satpathy v. P.L.*

Dani, (1978) 2 SCC 424, and *Selvi v. State of Karnataka*, (2010) 7 SCC 263, which prohibit compelled self-incrimination and coercive techniques like narco-analysis.

Use of Non-Reporting Laws: Expressive Independence, Suppressive Effects and Ambiguity

Section 202 provides requirements of the so-called testimonial speech, or an affirmative support of the speech about offenses, thus limiting cognitive freedom: a person must check his /her conscience and reveal information in the fear of punishment. The uncertainty of the term reason to believe is no better than the deficiencies in the case of *Shreya-Singhal*, and leads to inconsistent enforcement; family observers are faced with untenable situations, which sidelines the expressive agency (examples of POCSO reporting consensual actions between adolescents is a violation of decisional privacy). The chilling effects are common: the 2024 underreporting of 60 per cent of female crimes by the NCRB can be partially explained by the fear of retaliation and not by the lack of interest, which is the subject of self-censorship implying a further ensnaring of the silences which the Section 202 is supposed to solve.

There has been no direct Supreme Court strike-down; however, there are several indirect indicators. Media guidelines (as seen in *Sakal Papers*, above) do not permit compelled content. *Justice K.S. Puttaswamy v. Union of India* (2017) interrelates speech with informational privacy, including the right to be left alone. This position has been inconsistently applied in lower courts: in 2023, the Delhi High Court entertained a public interest litigation challenging Section 19 of the POCSO Act (pending as of March 2026) on grounds of overbreadth; in 2022, the Bombay High Court allowed physician liability under Section 176 to proceed without a proportionality analysis, prioritizing child safety.

Personal Liberty under Article 21: Broad Parametric and Proportionality Analysis

Maneka Gandhi v. Union of India (1978) expanded Article 21 to include due process and fairness in procedure established by law, with Justice Chandrachud emphasizing that personal liberty encompasses autonomy and privacy. This was further developed in *Justice K.S. Puttaswamy v. Union of India* (2017), which recognized privacy and autonomy as core components of the liberty principle. Criminalizing omissions may impair cognitive liberty, resembling state-enforced disclosure of conscience, akin to compelled testimony prohibited under Article 20(3). The doctrine of proportionality, applied in *Central Public Information*

Officer v. Subhash Chandra Agarwal, (2020) 5 SCC 481, comprises four elements:

Legitimate Objective: The crime prevention and safety of the population: verified (*e.g.*, *Lalita Kumari v. Govt. of U.P. (2014) 2 SCC 1*).

Rational Nexus: Part half--FIR needs support, yet underreporting persists (NCRB: Adjusted 2024).

Least Intrusive Means: Non-existent- fines and prizes will be sufficient options to the incarceration; anonymity platforms can be implemented.

Balancing: Detrimental costs of quiet and privacy are much greater than the marginal deterrence value.

The POCSO Act presents a problematic scenario: Section 19 of the Act, which mandates reporting, often brings consensual adolescent relationships (ages 16–18) within its ambit, exposing individuals to stigma and undermining dignity (*Navtej Singh Johar v. Union of India, (2018) 10 SCC 1*). The lack of discretion in reporting such conduct raises concerns about the violation of autonomy.

Contacts between Collateral Rights and Judicial Precedents

Article 20 (3) Self-Incrimination: Outlaws forced testimony; non-reporting conditions are equal to those of testimonial safeguards (Selvi, above).

Article 14 Equality: Selective obligations (public vs. private) that are found to be incomplete.

Article 21: Dignity- Coercion within the family undermines relational autonomy (*Justice K.S. Puttaswamy v. Union of India, 2017*). The precedents indicate that *Lalita Kumari v. Govt. of U.P. (2014)* requires oversight (now reflected in BNSS reporting provisions); *State v. Ram Autar (Allahabad HC, 2015)* limits the scope of legal obligation; and shortcomings in the POCSO framework are not remedied by BNSS provisions. Invalidation may be prompted by the pending public interest litigation challenging POCSO (2023) before the Delhi High Court.

Normative Critique: Moving to Pluralism of Rights of Colonial Coercion

Colonial institutionalism - Supremacy of the state over the individual- does not bode well with

post-Emergency constitutionalism, which is dominated by negative freedoms. The concept of proportionality reveals excess: the inclusion of bystanders kills plurality in heterogeneous India; the absolutism of POCSO ignores the autonomy of teens. Protections are promoted by comparative teachings: U.S. *Barnette* absolutism extends to non-serious cases; Canada *R. v. Jones* (3 SCR 663) balances obligations and exceptions.

Critical Analysis

Doctrine of Proportionality: The proportionality test, articulated in *Central Public Information Officer v. Subhash Chandra Agarwal*, (2020) 5 SCC 481, is influenced by the German *Verhältnismäßigkeit* principle and the Canadian *Oakes* test (*R. v. Oakes*, [1986] 1 SCR 103). The four-pronged test used to limit rights raises concerns in this context. Sections 176 and 202 of the Indian Penal Code (IPC), corresponding to BNS Sections 125 and 176, reveal significant weaknesses when examined in light of obligations that compel reporting.

Proportionality Limb	Assessment for IPC 202/BNS 125	Judicial Analogues & Rationale
Legality	Statutory text clear/precise; "reason to believe" & "legally bound" judicially narrowed.	<i>Modern Dental College v. State of MP</i> ((2016) 7 SCC 353)—legality demands accessible norms.
Legitimate Aim	Crime detection/public safety/FIR efficiency—undisputed state interest.	<i>Lalita Kumari v. Govt. of U.P.</i> ((2014) 2 SCC 1)—FIR mandates serve justice delivery.
Suitability	Partial efficacy: NCRB 2024 shows 10% post-BNS FIR rise, but 60% gender crime underreporting persists.	NCRB data; suitability requires empirical causation, here attenuated by systemic barriers.
Necessity	Fails: less intrusive alternatives viable	<i>Puttaswamy v. UOI</i> ((2017)

Proportionality Limb	Assessment for IPC 202/BNS 125	Judicial Analogues & Rationale
	(monetary rewards, anonymity portals, public education).	10 SCC 1)—privacy intrusions demand minimal impairment.
Balancing/Strict Scrutiny	Rights burden excessive: silence/privacy erosion outweighs marginal deterrence in non-grave cases.	<i>Kunal Kamra v. UOI</i> (Delhi HC 2021)—speech burdens demand narrow tailoring.
Narrow Tailoring	Overbroad: applies to all 5+ year offences/bystanders; no grave crime carve-out or fiduciary limit.	<i>Shreya Singhal v. UOI</i> ((2015) 5 SCC 1)—vague curbs struck for chilling effects.

This tabular audit exposes pathology: while legality/aim hold, necessity/balancing collapse under Puttaswamy's decisional autonomy mandate.

Strengths and Business Projections

The literature on advocacy points out significant advantages of the statutory mechanisms, which are mainly the prevention of concealment in high-risk settings like honour killings communal unrests, and institutional malfeasance (e.g., the Unnao rape cover-up). As observed in Lalita Kumari monitoring, section 176 helps in curbing complacency in the minds of the public servants. POCSO Section 19-based convictions, such as the case in 2022 in the Bombay High Court, of a teacher convicted of a two-year sentence, demonstrate how these provisions extend into the professional field. The post BSN empirical data show that there is a slight improvement with a ten percent increase of first information reports on the 2024 to 2025 fiscal years according to the initial NCRB statistics and thus justifying the appropriateness of these provisions on cognizable offences. The mandates replace the proactive investigative procedures in the police establishments where resources are limited.

Weaknesses: Chilling Effects, Class Bias and Expressive Overreach

Opposing drawbacks are seen. The chilling effect demoralizes witnesses as the fears of retaliation in caste-dominated areas, especially on non-reporting of Dalit attacks, are related to about 60 per cent under-reporting, identified by NCRB, thus exacerbating inequalities handled by Section 202. Class bias is present when poor people can get away with ignorance or plausible deniability, and the rich people can use privilege, which is also depicted by the spousal privilege in the Section of Evidence Act 122. By involving third parties as state actors through overbreadth mechanisms undermines pluralism: omissions by families in suicide reporting creep on the relational autonomy strand, and are subject to the dignity strand in Puttaswamy.

Empirical Insights and Investigation of NCRB

The 2024 NCRB report provides an in-depth examination in which it is stated that the crimes committed against females such as dowry killings and rapes are underreported by 6070 percentage due to fear of family consequences and indifference in society. After the BNS, FIRs rose by 10 percentage points, but the number of prosecutions under Section 202 did not improve because of the obstacles in the evidence. In the example of child offences that are enforced under POCSO, the under-reported rate is 40 per cent, which poses the question with regard to the effectiveness of Section 19, as there are other variables, including stigma and mistrust, that dominate. According to the longitudinal data between 2014-2024, there was little effect of mandates: digital FIRs and zero-FIR programs under the BNSS are more effective than traditional fines.¹²

Comparative Jurisprudence: Lessons of Absolutism to Equilibrium

The United States First Amendment provides a virtual ban on speech that is coerced. Barnette (1943) held the flag salutes compulsory, and stated that it was impossible to compel orthodoxy by a government official. The requirement to compel the Live Free or Die slogan was invalidated by Maynard. Similarly, a lack of reporting requirements maintains audience silence when there is no threat of danger.

¹² NAT'L CRIME RECORDS BUREAU, CRIME IN INDIA 2024 (Gov't India) (reporting 60% gender crime underreporting).

Canadian jurisprudence offers that the provisions of Section 2(b) of the Charter allow limited positive obligations as in the case of *R. v. Jones*, whereby reporting obligations are weighed against minor-offence exemptions. Discriminatory mandates were overturned by Canada

According to the European Convention on Human Rights, limited reporting is permitted in Article 10, which states the following; *Handyside v. UK* the moral sentiment protection; *Steel and Morris v. UK* (2005) demands omission proportionality. The synthesis in India is still curtailed and the remnants of colonialism still looms over the *Barnette*-style protections of non-fiduciaries.

Enforcement difficulties and Systemic Pathologies

Many barriers to prosecution exist: intent requires subjective proof, as noted in *State v. Ram Autar*¹³ (Allahabad HC, 2015); legal ambiguity (familial and contractual obligations) and fear of retaliation (especially caste- or mafia-driven) further deter enforcement. The implementation of POCSO does not adequately account for safeguards for public servants as provided under BNSS Section 218, as observed by the Kerala High Court (2025). There is also inconsistent application by lower courts: the Punjab & Haryana High Court (2023) has protected spousal non-reporting on grounds of privilege, whereas the Madras High Court (2020) has imposed liability on physicians without a detailed proportionality analysis.

Bigger Implications: Family Coercion is a Threat to Constitutional Pluralism

India's multicultural society necessitates protected spaces of silence; post *Justice K.S. Puttaswamy v. Union of India* (2017), cognitive liberty, as reflected in *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1, supports autonomy and anonymity. Economic literature questions the effectiveness of deterrence: nominal penalties (such as the outdated fine of 40 rupees) are less effective in ensuring compliance than incentive-based models, such as the American whistle-blower system.

Normative Judgment: Lack of Doctrine and Reform Necessity

The undermining of contemporary constitutionalism is because of the excessive breadth, intimidation, and disproportionate effect. Although there are strengths between severe crime

¹³ *State v. Ram Autar*, Criminal Misc. Bail Appl. No. 2345/2015 (All. HC 2015).

deterrence, it can be salvaged by customization; empirical marginality shows symbolic extravagance. The reason to interfere with the legislative branch is in the reluctance of judges, who have not yet participated in Supreme Court overruling; the element of proportionality would reorganize compulsion into incentives, protecting the rights-pluralist democracy of India.

Reform Ideas

Leading Reform Principles

Per *Justice K.S. Puttaswamy v. Union of India* (2017) 10 SCC 1 and *Central Public Information Officer v. Subhash Chandra Agarwal*, (2020) 5 SCC 481, any recalibration must be grounded in strict proportionality—necessity and balancing—to ensure that legitimate objectives are achieved with minimal intrusion. The NCRB 2024 estimate of 60% under-reporting reflects systemic discouragement (distrust, shame), which outweighs penal deterrence, thereby favouring incentive-based approaches over coercive penalties. U.S.-style whistle-blower incentives and EU-type limitations support a pluralistic Indian framework that preserves familial and relational autonomy under varying conditions.

The first suggestion is gradual decriminalisation and graded punishment.

Core Reform: Tiered penalties based on the gravity of the offence, with decriminalisation of non-grave omissions (below 7 years) into fines, while retaining custodial sentences for serious breaches. Amendment to BNS Section 125:

- (i) < 5-year offences: ₹5,000–₹10,000 fine;
- (ii) 5–10 years: community service and civil penalty;
- (iii) 10+ years / fiduciary duties: custodial sentences.

Overbreadth undermines uniformity—bystander non-reporting of minor offences restricts speech without proportional public safety gains (cf. *Shreya Singhal v. Union of India*, (2015) 5 SCC 1, **vagueness doctrine**). The outdated ₹40 fine under IPC Section 176 reflects the decriminalisation trend (cf. BNS petty offences). NCRB 2024 data indicate very few Section 202 convictions, highlighting enforcement difficulty.

BNS Proviso: No incarceration for omissions absent fiduciary duty or grave offence (10+ years). *State v. Ram Autar* (Allahabad HC, 2015) narrows interpretation; statutory codification is advisable.

Bystander Exemptions and Fiduciary Carve-outs:

Basic Reform: Exempt non-obligated individuals, limiting liability to fiduciaries—public officials, professionals (e.g., doctors/teachers under POCSO), and employers. A “bystander” is one lacking legal or contractual duty to act; spousal privilege under Evidence Act Section 122 supports non-disclosure within families.

Rationale: Compelling laypersons to report infringes cognitive liberty (decisional privacy in *Puttaswamy*) and risks class bias—disproportionately burdening the vulnerable while shielding the privileged (cf. *Bijoe Emmanuel*). Relational ethics explain high under-reporting in familial contexts (NCRB data on gender crimes); exemptions preserve plurality. Section 19 POCSO applies broadly, yet enforcement disproportionately targets professionals (Bombay HC, 2022).

BNS Section 125(a): Liability confined to statutory/fiduciary duties; bystanders exempt.

Whistle-blower Shields and Anonymity Infrastructure (Proposal 3):

Reform: Establish a national anonymous reporting portal (BNSS-integrated) with safeguards akin to identity protection frameworks (concealment and anti-retaliation measures). Technological verification (e.g., blockchain/AI) may support authenticity without disclosure.

Rationale: Under-reporting stems from fear of reprisal (NCRB 2024—caste/mafia contexts); anonymity encourages FIRs without infringing speech (cf. Delhi HC, *Kunal Kamra v. Union of India*, 2021). U.S. whistle-blower reward models (e.g., Dodd-Frank) and Indian enforcement experience indicate effectiveness. Post-*Puttaswamy* privacy norms require minimal intrusion mechanisms.

Proportionality Clause and Judicial Guidelines Codification (Proposal 4):

Core Reform: Codify the four-pronged proportionality test within BNS (preamble or statutory clause), as articulated in *Subhash Chandra Agarwal*. Judicial guidelines should allow rebuttal

of presumed *mens rea* and incorporate balancing factors (family relationships, gravity of offence, availability of alternatives).

Rationale: In the absence of Supreme Court invalidation of Section 202, legislative intervention is necessary. The pending POCSO PIL (Delhi HC, 2023–) reflects ongoing uncertainty. Codification advances *Maneka Gandhi* due process values and reduces inconsistency across High Courts (e.g., divergent approaches of Bombay and Kerala HCs, 2022).

Draft Clause (BNS Section 125(3)): “Liability shall arise only where proportionate, satisfying the requirements of Articles 19 and 21, subject to judicially prescribed standards of necessity and balancing.”

Rewards and Community Paradigms Incentive Shifts

Reporting should be treated as a civic virtue rather than compulsion, supported through NCW/NCRB community education efforts.

Rationale: The deterrent effect of penalties is largely symbolic (given low conviction rates), whereas incentive-based models show stronger results (e.g., over \$70B recovered under the U.S. False Claims Act). NCRB 2024 data indicating a 10% increase in FIRs post-BNS appear time-dependent rather than fear-driven. Behavioural economics suggests that loss aversion improves compliance when benefits are positively framed (as dignity-enhancing, cf. *Navtej Singh Johar*).

Proposal: Introduce a rewards fund under BNS Section 125, with a fine-to-reward ratio of 1:10. Incentives may also be extended to professionals such as teachers under the POCSO framework.

POCSO -Specific Protections and Adolescent Agency Proposal

Recent Reform: POCSO Section discretion over consensual acts (16-18 years, no exploitation); carve-outs in statutory privacy (sealed report, victim veto). Concur with the decriminalisation position of *Navtej*.

The term of absolutism defines adolescent romance as offences to stigmatise without protective

connection (NCRB 40% under-reporting) of mixed motivation. The autonomy in Puttaswamy guaranteed decision privacy.

Implementation: Section 19 Non-reportable where consensual acts with peers. The change is catalysed by Pending Delhi HC PIL.

Possible, Comparative, and Sequencing Anchors

Pilot anonymity/rewards in 5 states, followed by BNS amendments and Supreme Court guidelines. Estimated annual expense: ₹500 crore (approximately 1% of the NCRB budget), offset by improved FIR efficiency.

Comparative Fit:

- **United States:** Reward-based model (e.g., ~\$112M SEC awards in 2023) alongside protection of bystander silence (*Barnette* absolutism).
- **Canada:** Balanced approach through exemptions (*R. v. Jones*).¹⁴
- **European Union:** Narrow tailoring under Article 10¹⁵

Institutional Role: NCW contributions and Law Commission review (post-BNS) to guide stakeholder engagement and reform design.¹⁶

Success Measure: Target a 20% reduction in NCRB-reported under-reporting by 2027.

Conclusion

Findings: Conclusion. Constitutional Infirmity and Proportionality Failure

Non-reporting offences, criminalised under Sections 176 and 202 of the Indian Penal Code (BNS Sections 125 and 176), are a colonial legacy that sits uneasily with the constitutional ethos of pluralism, which places rights at the centre of post-Emergency constitutional thought.

¹⁴ *R. v. Jones*, [1986] 2 S.C.R. 284

¹⁵ *Handyside v. United Kingdom*, 5493/72 (Eur. Ct. H.R. 1976).

¹⁶ LAW COMM'N OF INDIA, 280TH REPORT ON Decriminalisation OF MINOR OFFENCES (2023).

Although these provisions aid in crime detection and citizen protection¹⁷, they do not fully satisfy the test of proportionality required under the Constitution.

According to 2024 data from the National Crime Records Bureau, First Information Reports (FIRs) have increased by 10% since the implementation of the BNS; however, female victims of crime remain underrepresented by nearly 60%. Structural barriers—such as distrust of authorities and fear of retaliation—render punitive measures less effective as deterrents. The assumption of necessity therefore weakens: fines, rewards, and anonymous reporting mechanisms may secure compliance without enforcing moral conscientisation¹⁸ Article 19(1)(a) thus protects silence, cognitive liberty, and relational dignity¹⁹ often at a high cost relative to the limited gains achieved.

The inclusion of bystanders undermines expressive plurality, and ambiguity in the “reason to believe” standard fosters arbitrariness²⁰ Section 19 of the POCSO Act adopts an overbroad approach that may encroach upon adolescent agency without a sufficiently tailored protective nexus. Judicial inconsistency persists across High Courts, as seen in the 2022 Bombay High Court decisions imposing liability on doctors and the 2015 Allahabad High Court stance limiting bystander liability, reflecting broader judicial hesitation.

Constitutionalizing Compulsion to Constitutional Pluralism

The Indian constitutional structure requires reform. The colonial state-over-subject paradigm adversely affects fundamental freedoms that are essential in a pluralistic democracy. *West Virginia State Board of Education v. Barnette*, 319 U.S. 624 (1943), underscores that no official can prescribe orthodoxy, particularly in the context of non-fiduciary obligations; *R. v. Jones*, [1986] 2 SCR 284, reflects a balance between positive obligations and exemptions; and Article 10 jurisprudence of the European Court of Human Rights²¹ demonstrates proportionality through narrow tailoring.

Legislative amendments to the BNS should incorporate graded decriminalisation (e.g., fines for offences below seven years), introduce bystander exemptions, establish secure anonymity

¹⁷ *Lalita Kumari v. Government of Uttar Pradesh*, (2014) 2 SCC 1)

¹⁸ *Justice K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1).

¹⁹ *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1)

²⁰ *Shreya Singhal v. Union of India*, (2015) 5 SCC 1

²¹ *Handyside v. United Kingdom*, 5493/72 (Eur. Ct. H.R. 1976).

infrastructure, and embed statutory proportionality. Incentive-based mechanisms—such as the 2023 \$112 million awards by the U.S. Securities and Exchange Commission—have proven more effective than traditional penalties.

Judicial catalysts, including the pending POCSO public interest litigation (2023–2026) before the Delhi High Court, may influence reform, though courts have been cautious in invalidating criminal provisions. Supreme Court guidance, building on *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248, suggests that fairness must precede presumptions of penal *mens rea*, and that familial privilege merits recognition.

Policy Implications and Roadmap

It is to be implemented through a phased roadmap: Year 1 (2026–27) will pilot anonymous reporting portals (NCRB/UMANG applications) and channel rewards funded through penalties (\approx ₹500 crore). The BNS Amendment Bill will be introduced in Year 2, based on the recommendations of the 280th Law Commission Report; Year 3 will see the formulation of Supreme Court guidelines on proportionality, alternatives, and procedural safeguards. Under-reporting is projected to decrease by 20% by 2028 (NCRB data).

Empirical validation will be undertaken by the National Commission for Women and NCRB, with inputs from victim groups and Bar Councils through Parliamentary Standing Committees. Moral hazard can be mitigated, and coverage improved, through blockchain-based verification and AI-assisted triage.

It is essential to reconceptualise reporting as a civic virtue rather than a compulsory duty. Stigma should be addressed at the community level and incorporated into educational curricula to encourage whistleblowing without coercion. Behavioural economics suggests that gain-framing enhances cooperation and engagement more effectively than loss aversion²²

Despite the pragmatic necessity of public safety, criminalising non-reporting offences challenges constitutional principles—silence as expression, freedom as privacy, and plurality as the lifeblood of democracy. A balance between collective welfare and individual autonomy can be preserved through the proposed reforms, thereby protecting India's constitutional evolution. The direction of reporting should align with cognitive liberty, consistent with *Justice*

²² (*Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1).

K.S. Puttaswamy v. Union of India (2017), which recognises informational privacy as central to personality. The ingenuity of legislation, the discipline of judicial review, and empirical humility must together ensure that colonial coercion evolves into constitutional engagement.

Policy effectiveness should be guided by empirically validated measures, including bystander chilling-effect surveys and reward-based randomised trials, serving as safeguards against disproportionate means employed for legitimate ends.

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