
FILLING THE VOID: CASTE-BASED HONOUR KILLINGS AND THE MISSED OPPORTUNITY OF THE BHARATIYA NYAYA SANHITA, 2023 - A STUDY OF THE LEGISLATIVE GAP IN INDIA'S RESPONSE TO HONOUR KILLINGS

Raghav Sivakumar, Dr. Ambedkar Government Law College, Chennai

ABSTRACT

Honour killings, one of the most enduring and violent expressions of caste and community control over individual choice, continue to occur across India with disturbing regularity, yet Indian criminal law contains no offence that names them as such. This paper examines the Bharatiya Nyaya Sanhita (BNS), 2023, which replaced the Indian Penal Code from 1 July 2024, and argues that its drafters missed a genuine opportunity to close this gap. While Section 103(2) BNS introduces a new offence of murder by a group of five or more persons on grounds including caste – popularly understood as India's answer to mob lynching – the provision does not extend to the far more common pattern of honour killings committed by one, two, or three family members acting alone. Such killings continue to be prosecuted as ordinary murder under Section 103(1) BNS, with the caste or honour motive treated, at best, as an aggravating fact for sentencing rather than a defining element of the offence. This paper traces the legislative history of India's failed attempts to enact a standalone law, examines the Supreme Court's guideline-based intervention in *Shakti Vahini v. Union of India* (2018), and draws a comparative lesson from Pakistan's Criminal Law (Amendment) Act, 2016. It concludes with a narrow, targeted legislative recommendation for closing the gap left open by the BNS.

I. Introduction

On 1 July 2024, the Bharatiya Nyaya Sanhita (“BNS”) replaced the Indian Penal Code, 1860, as the primary criminal code of India.¹ Marketed as a decolonised and modernised framework, the BNS introduced several new offences among them, for the first time in Indian criminal law, an offence targeting murder committed by an identity-motivated group. Section 103(2) BNS provides that when a group of five or more persons acting in concert commits murder on the ground of race, caste, community, sex, place of birth, language, personal belief, or any other similar ground, each member of the group is liable to death, life imprisonment, or a minimum term of seven years.²

This provision is widely, and correctly, understood as India's legislative response to mob lynching. What has gone comparatively unnoticed is what it does not do: it offers no relief for the more common and more intimate face of caste-motivated killing in India the murder of a son, daughter, or young couple by their own family or immediate kin for choosing a partner outside caste, community, or gotra lines. Honour killings in India are rarely mob violence in the Section 103(2) sense; they are typically carried out by a father, a brother, an uncle, or a small conspiracy of two or three relatives, sometimes with the tacit sanction of a caste or khap panchayat (known in Tamil Nadu as a katta panchayat) that never itself lifts a weapon. Because the offence requires a group of five or more persons acting in concert, the paradigm honour killing falls outside its scope and reverts to ordinary murder under Section 103(1) BNS³ the same provision that governs an unrelated property dispute or a crime of passion, with no statutory recognition that caste or honour was the motivating force.

This paper argues that this is not a minor drafting oversight but the continuation of a three-decade-long legislative reluctance to name honour killing as a distinct offence, despite repeated recommendations from the Law Commission of India and repeated urging from the Supreme Court. Part II examines the current legal position under the BNS in greater detail. Part III traces the legislative history of proposed and abandoned standalone legislation. Part IV considers the judiciary's attempt to fill this gap through guideline-based intervention in *Shakti Vahini*. Part V draws a comparative lesson from Pakistan's experience of legislating against honour

¹Indian Penal Code, 1860, § 302 (repealed by the Bharatiya Nyaya Sanhita, 2023, w.e.f. 1 July 2024).

²Bharatiya Nyaya Sanhita, 2023, No. 45 of 2023, § 103(2).

³Bharatiya Nyaya Sanhita, 2023, No. 45 of 2023, § 103(1).

killing. Part VI proposes a narrow legislative fix, and Part VII concludes.

II. The Legal Status Quo: Prosecuting Honour Killings Under the BNS

Chapter VI of the BNS, dealing with offences affecting the human body, retains the basic structure of the old Section 302 IPC. Section 103(1) BNS punishes murder simpliciter with death or life imprisonment and a fine; this is the provision under which the overwhelming majority of honour killings in India continue to be prosecuted. Section 103(2), the new group-murder clause, was inserted specifically to address the phenomenon of mob lynching that gained national attention through a string of incidents linked to cow-vigilantism and communal violence in the years preceding the BNS's enactment; commentary on the provision consistently frames it, and illustrates it, through hate-crime and lynching fact patterns rather than domestic or family-perpetrated killing.

The five-person threshold in Section 103(2) is deliberate and consequential. It was calibrated to capture organised mob violence—crowds gathering to attack a victim collectively—not the more clandestine, familial pattern typical of honour killings, where secrecy rather than public spectacle is the norm and the perpetrators are, almost by definition, a small number of blood relatives. A father who kills his daughter, or two brothers who together kill their sister's husband, do not constitute “a group of five or more persons” and therefore cannot be charged under Section 103(2) no matter how clearly caste or community honour motivated the act. They are tried, exactly as they would have been under the erstwhile Section 302 IPC, for plain murder.

The practical consequence is threefold. First, the caste or honour motive enters the trial, if at all, only as a circumstantial fact relevant to establishing intention or motive under ordinary rules of evidence—it carries no independent statutory weight, unlike the aggravated treatment Section 103(2) affords to group hate-motivated killing. Second, sentencing courts retain complete discretion over whether to treat the honour motive as an aggravating factor at all; there is no statutory direction requiring them to do so, in contrast to the mandatory minimum the legislature saw fit to prescribe for group hate crime. Third, and most significantly, the BNS sends an unintended expressive signal: that identity-motivated killing is a graver wrong when carried out by a crowd of strangers than when carried out by a family member enforcing caste endogamy—even though the latter is, by most empirical accounts, the more frequent occurrence

in India.⁴

III. The Road Not Taken: Legislative History

India's Parliament has had the opportunity to legislate specifically against honour killing for over a decade, and has consistently declined to do so. The starting point is the Law Commission of India's 242nd Report, submitted in August 2012.⁵ The reference to the Commission arose from a Parliamentary calling-attention motion, following which the then Union Home Minister assured the House that the issue would be examined.

Notably, the Law Commission's approach was more nuanced than simply reclassifying honour killing as an aggravated form of murder under the erstwhile Section 300 IPC. Its consultation paper had expressly rejected the government's suggestion that the definition of murder itself be amended to add a specific honour-killing clause, reasoning that the killing was already adequately captured by the ordinary law of murder. What the existing law failed to reach, the Commission observed, was the preparatory conduct the unlawful assemblies, kangaroo courts, and khap panchayat proceedings that precede and enable the killing but do not themselves constitute murder. Its proposed Bill therefore sought to criminalise the act of congregating to condemn, threaten, or coerce a couple over a marriage not otherwise prohibited by law independent of whether that assembly went on to result in violence.⁶

The Bill would have made such assemblies cognisable, non-bailable, and non-compoundable offences triable by a designated Sessions Judge, and would have shifted elements of the burden of proof onto the accused once basic facts of the assembly were established. Despite being drafted, debated, and repeatedly referenced in Parliament and by the Union Government as pending legislation through the following decade, the Bill was never introduced, let alone passed, in Parliament. As commentators have noted, the political economy of caste politics in which orthodox caste councils retain electoral influence in precisely the regions where honour killings are most prevalent, including Haryana, western Uttar Pradesh, and parts of Punjab has been credited with explaining this legislative inertia.

⁴National Crime Records Bureau, Ministry of Home Affairs, Government of India, Crime in India (annual series).

⁵Law Commission of India, Prevention of Interference with the Freedom of Matrimonial Alliances (in the name of Honour and Tradition): A Suggested Legal Framework, Report No. 242 (Aug. 2012).

⁶Prohibition of Unlawful Assembly (Interference with the Freedom of Matrimonial Alliances) Bill, 2011 (India) (unenacted; drafted pursuant to Law Comm'n Report No. 242).

The only jurisdiction in India to have enacted anything resembling the Law Commission's model is the state of Rajasthan, whose Legislative Assembly passed the Rajasthan Prohibition of Interference with the Freedom of Matrimonial Alliances Bill in 2019.⁷ That law criminalises the convening of an unlawful assembly to obstruct a marriage and prescribes death or life imprisonment where such interference results in a death, while empowering district magistrates to pre-emptively prohibit such assemblies. It remains, however, confined to Rajasthan; no equivalent central legislation exists, and the BNS enacted five years after the Rajasthan law and twelve years after the Law Commission's report did not absorb any version of this framework. The drafters' choice to insert Section 103(2), targeted narrowly at group hate-murder rather than at the assembly-and-coercion model the Law Commission had actually recommended, suggests the omission was not an oversight but reflects continued political reluctance to legislate directly against caste councils and khap panchayats by name.

IV. Judicial Stopgap: Courts as Reluctant Legislators

In the continued absence of standalone legislation, the Supreme Court has attempted to fill the vacuum through constitutional adjudication and prescriptive guidelines, most significantly in *Shakti Vahini v. Union of India*.⁸ The petitioner organisation, authorised by the National Commission for Women to research honour killings in Haryana and western Uttar Pradesh, sought a writ of mandamus under Article 32 directing the State to adopt preventive and remedial measures against khap panchayats and honour crimes.

The Court held that the right to choose one's life partner is an inextricable facet of individual liberty and dignity protected under Articles 19 and 21 of the Constitution⁹, and that no assembly whether termed a khap panchayat, katta panchayat, or otherwise has any legal authority to question, penalise, or obstruct a marriage between consenting adults that is not itself prohibited by law. Drawing on its earlier observations in *Lata Singh v. State of U.P.*¹⁰ and *Arumugam Servai v. State of Tamil Nadu*¹¹, the Court described the practice as one that must be "ruthlessly stamped out." Having found the existing statutory framework insufficient, the Court issued detailed preventive, remedial, and punitive directions: state governments were directed to

⁷Rajasthan Prohibition of Interference with the Freedom of Matrimonial Alliances Bill, 2019 (Raj.).

⁸*Shakti Vahini v. Union of India*, (2018) 7 S.C.C. 192 (India).

⁹India Const. arts. 19, 21, 32.

¹⁰*Lata Singh v. State of U.P.*, (2006) 5 S.C.C. 475 (India).

¹¹*Arumugam Servai v. State of Tamil Nadu*, (2011) 6 S.C.C. 405 (India).

identify districts, sub-divisions, and villages with a history of honour killings or khap activity over the preceding five years; police were directed to proactively engage with khap panchayat members to communicate the illegality of their conduct; states were directed to constitute special cells and safe houses for threatened couples and a round-the-clock helpline; and trials in honour-killing cases were to be conducted on a day-to-day basis before designated fast-track courts, ideally concluding within six months.

Significantly, the Court itself recorded the view that the legislature ought to enact a specific law targeting honour killings, implicitly acknowledging the inadequacy of guideline-based enforcement as a permanent substitute for legislation. Guidelines issued under Article 32 bind state machinery, but they are not law in the sense of creating a distinct offence, a distinct evidentiary standard, or a distinct sentencing framework; compliance depends on administrative will, and the directions have been inconsistently implemented across states in the years since. The Court's own admission that its intervention was interim in character, pending legislative action, underscores that the enactment of the BNS in 2023–24 represented Parliament's clearest opportunity in over a decade to convert Shakti Vahini's guidelines into binding statutory form an opportunity that, as Part II showed, was not taken.

V. Comparative Perspective: Lessons from Pakistan

Pakistan offers an instructive, if imperfect, comparison, because it is one of the few common-law jurisdictions to have legislated directly and repeatedly against honour killing. Under Pakistan's Qisas and Diyat framework, murder is treated as a compoundable offence: the victim's legal heirs may waive the right of retribution (qisas) or accept compensation (diyat), effectively pardoning the killer. Because honour killings are typically committed by a family member, the victim's own family often the same family that ordered or sanctioned the killing could simply forgive the perpetrator, allowing him to escape punishment entirely. The murder of Qandeel Baloch by her brother in 2016 brought this loophole to international attention and prompted the Criminal Law (Amendment) (Offences in the Name or Pretext of Honour) Act, 2016.¹²

The 2016 Act amended Section 311 of the Pakistan Penal Code to provide that even where the

¹²See Sophia Saifi & Don Melvin, Pakistan Tightens Loophole That Let Some 'Honor Killings' Go Unpunished, CNN (Oct. 7, 2016); Criminal Law (Amendment) (Offences in the Name or Pretext of Honour) Act, 2016 (Pak.).

right of qisas has been waived or compounded by the victim's heirs, a court may still impose a sentence of death or life imprisonment where the killing is found to have been committed in the name or on the pretext of honour, with a mandatory minimum of life imprisonment where the fasad-fil-arz principle is attracted.¹³ In effect, Pakistan's legislature identified the specific mechanism familial forgiveness that honour killings exploit to escape punishment, and closed it by statute, rather than leaving the matter to prosecutorial or sentencing discretion.

The reform is not without flaws, and these flaws are themselves instructive for India. The burden remains on the prosecution to prove that a killing was committed “in the name or on the pretext of honour” rather than for some other motive, and whether a given killing qualifies is left to substantial judicial discretion discretion that rights groups have criticised as inconsistently and, at times, sympathetically exercised toward the accused. Nonetheless, the core insight of the 2016 Act is directly transferable to India: identify the specific procedural mechanism through which family-perpetrated honour killings evade the ordinary consequences of the law of murder, and close it by express statutory language, rather than relying on judicial guidelines or general sentencing discretion. India does not have an equivalent of Pakistan's qisas-based compounding for murder murder under the BNS is non-compoundable but it faces an analogous gap in the form of an absent statutory recognition of caste or honour as a distinct, aggravating element of the offence, and an absent mechanism to reach the enabling conduct of caste councils and panchayats before a killing occurs.

VI. Recommendations

Building on the preceding analysis, this paper proposes two narrow, targeted amendments to the BNS framework, deliberately calibrated to be politically achievable rather than aspirational.

First, Section 103 BNS should be amended to add a further sub-section recognising murder committed on the ground of caste, community, or interference with a marriage or relationship not otherwise prohibited by law as an aggravating circumstance attracting a mandatory minimum sentence of life imprisonment, regardless of the number of persons involved in its commission. This removes the numerical threshold that currently confines caste-motivated killing protection to group conduct under Section 103(2), extending equivalent statutory recognition to the individual or small-group family perpetrator who is, empirically, the more

¹³Criminal Law (Amendment) (Offences in the Name or Pretext of Honour) Act, 2016, § 2 (Pak.), amending Pakistan Penal Code, 1860, § 311.

common offender in honour killing cases.

Second, Parliament should revive and enact a version of the Law Commission's 242nd Report recommendation targeting the preparatory and enabling conduct of caste councils and khap or katta panchayats criminalising the act of convening an assembly to condemn, threaten, or coerce parties to a lawful marriage, independent of whether that assembly results in violence. The Rajasthan model of 2019 provides a workable template that could be adopted, with appropriate modification, at the national level, converting the Shakti Vahini directions from executive guidelines into a binding, nationally applicable offence with defined evidentiary and procedural rules, rather than leaving implementation to variable administrative compliance across states.

Both recommendations are deliberately narrow in scope: they do not require wholesale reform of the BNS, nor do they require a new standalone code. They simply close two specific, well-documented gaps the numerical threshold in Section 103(2), and the absence of any offence targeting the caste-panchayat mechanism that enables honour killing using legislative techniques (aggravated sentencing categories, criminalisation of preparatory assembly) that already have precedent within Indian and comparative law.

VII. Conclusion

The Bharatiya Nyaya Sanhita, 2023, was framed by the Government as a wholesale modernisation of India's criminal law, shedding colonial vocabulary in favour of a code responsive to contemporary Indian realities. Yet on the specific and well-documented problem of caste-based honour killing a problem the Law Commission of India examined in detail as early as 2012, and one the Supreme Court felt compelled to address through binding guidelines in 2018 the BNS's only innovation, Section 103(2), was calibrated to a different phenomenon: identity-motivated group violence of the mob-lynching variety. The far more common pattern of honour killing, carried out within the family and typically by fewer than five perpetrators, continues to be governed by the ordinary law of murder, with no statutory recognition of the caste or honour motive that distinguishes it. This paper has argued that this is not an incidental gap but the latest instance of a legislative reluctance, sustained across more than a decade, to name and directly confront caste councils and khap panchayats in binding statutory language. Pakistan's uneven but instructive experience with the Criminal Law (Amendment) Act, 2016, demonstrates both the value of statute identifying the precise mechanism of impunity, and the

risks of leaving too much to judicial discretion in its application. India's legislature retains an opportunity, even after the BNS, to correct course by removing the numerical threshold that currently shields the family perpetrator, and by finally enacting a national law against the caste-council mechanism that the Law Commission identified as the true target of reform as far back as 2012.