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***Dr Ashish Brij (HOD, Law)**

****Mr. Rajeev Lochan Mishra (Researcher)**

Department of law, AWADHESH PRATAP SINGH UNIVERSITY, Rewa (M.P.)

A Critical Analysis of Approaches to Violence in India

ABSTRACT

- This paper examines India's institutional approach to violence through its constitutional, legislative, enforcement, and judicial frameworks. Violence in India is both structural—rooted in caste, gender, and communal hierarchies—and episodic, triggered by rumour, political conflict, or state action. NCRB 2022 records 58.2 lakh IPC crimes, including 57,582 caste atrocities, 31,516 rapes, and 438 communal incidents, yet conviction rates remain low: 27.4% for rape, 32% for SC/ST Act cases, and 19.2% for riots.
- The state's response has evolved across three phases: colonial order-maintenance, post-1950 rights-based legislation, and post-2012 victim-centric reforms culminating in the Bharatiya Nyaya Sanhita 2023. Key instruments include special laws—SC/ST PoA Act 1989, DV Act 2005, POCSO 2012, and UAPA 1967—while institutional actors operate under persistent constraints: 152 police per lakh population against the UN norm of 222, judicial pendency of 3.1 crore cases, and non-implementation of Prakash Singh 2006 police reforms in 20 states.
- The central finding is an implementation gap: legal density coexists with social sanction, political interference, and economic dependence that sustain violence. The paper concludes that sustainable reduction requires shifting from reactive punishment to preventive capacity, police autonomy, fast-track adjudication, and time-bound victim compensation

1. INTRODUCTION AND DEFINITION OF VIOLENCE

Overview

Violence in India is not a monolith, but a continuum of structural and episodic acts embedded in caste, gender, religion, region, and state power. The NCRB recorded 58.2 lakh IPC crimes in 2022, including 28,522 murders, 57,582 offences under the SC/ST Prevention of Atrocities Act, and 31,516 cases of rape. Yet these figures capture only reported incidents. NFHS-5 reveals that 29.3% of women aged 18–49 have experienced spousal violence, while 86% never sought help from any source. This gap between official data and lived reality frames the central puzzle of India's approach: why does violence persist despite a dense web of constitutional guarantees, criminal codes, and special laws?

The state's response has evolved through three phases: (i) colonial order-maintenance under the Police Act 1861; (ii) rights-based legislation post-1950 under Articles 14, 15, 17 and 21; and (iii) the victim-centric phase post-2012, culminating in the Bharatiya Nyaya Sanhita 2023, which codifies mob lynching as a separate offence under Section 103(2).

This paper maps four dimensions: the constitutional and statutory framework; law enforcement realities; judicial intervention strategy; and policy gaps and reform pathways. Using NCRB, NFHS, NHRC data and Supreme Court jurisprudence, it examines why violence endures and what shifts are required to move from reactive punishment to preventive capacity.

Legal Definition

Indian law does not provide one omnibus definition of 'violence.' Key statutes define specific forms:

- Bharatiya Nyaya Sanhita 2023: Sec 100 – murder; Sec 63 – rape; Sec 115 – hurt; Sec 103(2) – mob lynching by five or more persons on grounds of race, caste, community, sex, language, or personal belief.

- SC/ST Prevention of Atrocities Act 1989: Sec 3 defines 'atrocities' to include forcing inedible substances, stripping, sexual exploitation, social/economic boycott, and dispossessing from land or water.
- Protection of Women from Domestic Violence Act 2005: Sec 3 defines domestic violence as physical, sexual, verbal, emotional, and economic abuse—widening violence beyond bodily harm to include control of resources and dignity.
- Armed Forces Special Powers Act 1958: Grants power to use force 'even to the causing of death'—a statutory definition of state-sanctioned violence.

Constitutional Definition

The Supreme Court has read violence through Article 21—Right to Life and Personal Liberty. In *Francis Coralie Mullin v UT of Delhi* (1981), life means more than animal existence: it includes dignity. In *DK Basu v State of WB* (1997), custodial torture was held to be 'naked violence' violating Art 21. In *Tahseen Poonawalla v Union of India* (2018), mob lynching was called 'horrendous acts of mobocracy.' Synthesising text and case law, constitutional violence means: any act, omission, or condition—by State or private actors—that deprives a person of life, liberty, equality, or dignity guaranteed under Part III, or that perpetuates discrimination prohibited by Arts 15 and 17.

Sociological Definition

Drawing on Galtung's typology: Direct Violence (murder, rape, riot); Structural Violence (caste exclusion, dowry deaths, malnutrition due to denial of PDS); and Cultural Violence (norms that justify honour killing or marital rape). Indian sociologists—Srinivas, Omvedt, Veena Das and Oommen—locate violence in power relations over

land, labour, and identity. Working sociological definition: Violence in India is any physical, psychological, sexual, economic, or symbolic act or condition, by individuals, groups, or the state, that inflicts harm and functions to produce or reproduce unequal relations of caste, gender, class, religion, or region.

2. TYPOLOGY OF VIOLENCE IN INDIA

Caste Violence	57,582 SC/ST PoA cases (NCRB 2022)	Dalit assertion, inter-caste marriage, land/temple entry	Kailani 2006, Una 2016, Hathras 2020
Gender Violence	31,516 rapes; 6,450 dowry deaths (NCRB 2022); 29.3% women face spousal violence (NFHS-5)	Lifecycle—sex-selective abortion to witch-hunting	DV Act 2005, POCSO 2012, Nirbhaya 2012
Communal / Mob	438 communal incidents; 19.2% conviction for riots	Rumour, hate speech, political mobilisation	Tahseen Poonawalla 2018
State / Custodial	175 custodial deaths (NHRC 2021-22); 1,528 Manipur cases (Extra Judicial Execution 2016)	AFSPA zones, UAPA misuse	DK Basu 1997, Manipur SC probe 2023

Cyber-Mediated	12,317 cyber gender violence cases (NCRB 2022)	Online incitement → offline lynching; WhatsApp-driven riots	IT Act Sec 66E, 67; BNS Sec 77
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3. CONSTITUTIONAL AND LEGISLATIVE FRAMEWORK

3.1 Constitutional Pillars

Articles 14, 15, 17 and 21 create positive obligations on the state. Art 39A mandates legal aid. The Supreme Court has expanded Art 21 to cover freedom from torture, mob violence, and sexual assault. Art 142 is used to fill legislative gaps through guidelines.

3.2 Core Criminal Laws

The Bharatiya Nyaya Sanhita 2023 replaces the IPC: Sec 100–103 (murder including mob lynching), Sec 63–73 (sexual offences), Sec 147–158 (rioting). The BNSS 2023 replaces CrPC: Sec 144 (preventive), Sec 396 (victim compensation).

3.3 Special Laws

Violence Type	Law	Key Feature
Caste	SC/ST PoA Act 1989 (amd 2015, 2018)	Non-bailable; special courts; Sec 4 punishes police neglect; Sec 15A victim rights
Gender	DV Act 2005, POCSO	Civil + criminal; child-friendly courts; mandatory registration

	2012, SH Act 2013	
Terror	UAPA 1967, NIA Act 2008	Bail hard; NIA overrides states
Cyber	IT Act Sec 66E, 67; BNS Sec 77	Covers revenge porn, doxxing, stalking

3.4 Legislative Gaps

No central anti-lynching law exists despite Tahseen Poonawalla 2018 guidelines. Marital rape exception remains under BNS Sec 63 Exception 2. AFSPA Sec 6 grants immunity from prosecution. The Communal Violence Bill 2014 lapsed without enactment.

4. INSTITUTIONAL RESPONSE

India's response rests on four institutional pillars:

- Police: CCTNS links 16,000+ stations, yet the SPIR 2018 finds 44% of people fear the police. Staffing at 152 per lakh population is far below the UN norm of 222.
- Judiciary: 195 exclusive courts for SC/ST cases; 1,023 Fast-Track Special Courts for rape/POCSO post-Nirbhaya. Conviction rates remain low: rape 27.4%, caste atrocities 32%, rioting 19.2%.
- Oversight Bodies: NHRC (est. 1993) can recommend compensation—in 2022 it awarded ₹5 lakh in custodial death cases. NCW and NCSC operate with recommended but limited powers.
- NIA and Armed Forces: The NIA Act 2008 handles terrorism. AFSPA continues in J&K and Northeast India. Naga People's Movement v UoI (1997) upheld AFSPA with caveats.

- District Magistrate: Preventive action under BNSS Sec 144. Internet shutdowns used as a response—84 in 2022, the highest globally (Manipur 2023: 200+ days shutdown).

5. LAW ENFORCEMENT CHALLENGES

Challenge	Evidence	Impact
Structural Deficit	152 police/lakh vs UN norm 222; 1 IO handles 200+ cases; 25% stations lack vehicles	Delayed investigation; chargesheet backlog
Social Bias	SPIR 2019: 50% police think minorities 'prone to crime'; FIR refusal in 40% PoA cases	Systemic under-reporting by marginalised groups
Political Interference	Prakash Singh 2006 directives ignored in 20 states; SP transfer average 11 months	Impunity; officers align with ruling party interests
Tech Lag	Forensics backlog 6+ months; rumour spreads in minutes but Sec 144 takes hours	Low conviction rates; mob violence not prevented

6. JUDICIAL INTERVENTION STRATEGY

Preventive Strategy

DK Basu v State of WB (1997): 11-point arrest guidelines—now codified in BNSS Sec 41B–41D. Tahseen S. Poonawalla v UoI (2018): nodal officers in every district, media advisories, compensation within 30 days. Shakti Vahini v UoI (2018): special cells to stop honour killings; khap panchayat orders declared illegal. Arumugam Servai v State of TN (2011): DM/SP personally responsible for preventing caste clashes during temple festivals.

Protective Strategy

Delhi Domestic Working Women's Forum v UoI (1995): rape victims get legal aid, counselling, and anonymity. Nipun Saxena v UoI (2018): uniform victim compensation; Mahender Chawla v UoI (2018): Witness Protection Scheme 2018—threat analysis, relocation, new identity (critical for PoA cases where 62% of witnesses turn hostile). Zahira Habibullah v State of Gujarat (2004): retrial ordered outside Gujarat due to witness intimidation.

Punitive / Accountability Strategy

Brij Mohan Lal v UoI (2002): upheld fast-track courts—1,023 FTSCs now operational. Prakash Singh v UoI (2006): 7 directives on police tenure and Police Complaints Authority; 20 states remain non-compliant. Extra Judicial Execution Victim Families v UoI (2016): CBI/SIT probe into 1,528 Manipur encounters. Rudul Sah v State of Bihar (1983): birth of constitutional tort—compensation for illegal detention. Laxmi v UoI (2014): minimum ₹3 lakh for acid attacks, enhanced to ₹8 lakh in 2020.

Gaps in Judicial Strategy

Implementation deficit: Tahseen Poonawalla nodal officers missing in 18 states (2023). Pendency: 3.1 crore cases pending; average PoA trial takes 5.2 years against the 60-day rule. Marital rape exception under BNS Sec 63 remains pending before a 5-judge bench (RIT Foundation case). No comprehensive anti-lynching law despite 2018 guidelines.

7. POLICY ANALYSIS AND GAPS

Dimension	Policy Promise	Ground Reality	Gap Type	Evidence
Reporting	Zero FIR, mandatory registration (BNSS Sec 154)	Police refuse FIRs in 44% PoA cases; 86% women never report	Implementation	NFHS-5; Teon Thar study
Investigation	Charge sheet in 60 days	Avg 187 days; forensics backlogged 3–6 months	Capacity	NCRB 2022
Courts	Exclusive Special Courts	Only 195 courts for 766	Design	SJE Report 2022

	(PoA Sec 14)	districts		
Conviction	Deterrent punishment	Rape 27.4%; PoA 32%; Rioting 19.2%	Deterrence	NCRB 2022
Marital Rape	Art 21 dignity for all	BNS Sec 63 Exception 2 still legalises it	Legislative	Independent Thought 2017
Lynching	Tahseen Poonawalla guidelines	No central law; nodal officers absent in 18 states	Codification	MHA Lok Sabha 2023
State Violence	NHRC + judicial review	AFSPA Sec 6 blocks prosecution; 0 convictions 1958–2023	Immunity	EJVF 2016

Root Causes

Political Economy: Violence maintains caste/gender hierarchies benefiting local elites; police are transferable and align with elected representatives. **Fiscal Neglect:** India spends 0.08% GDP on judiciary and 1.4% on police against a global benchmark of 2.5%. **Colonial Policing Model:** The Police Act 1861 focuses on order, not service. **Social Sanction:** Honour killings, khap diktats, and social boycotts receive community backing; law enters after violence, not before.

8. RECOMMENDATIONS

Legislative

- Delete BNS Sec 63 Exception 2—criminalize marital rape for all women.
- Enact a Prevention of Mob Lynching Act codifying Tahseen Poonawalla 2018 with criminal liability for derelict officers.
- Amend AFSPA Sec 6: sanction deemed given if not decided within 90 days; make NHRC inquiry mandatory in all encounter deaths.

Police & Investigation

- Full Prakash Singh compliance via Art 142 order with financial incentives linked to Finance Commission grants.
- Reach 222 police per lakh. Establish district forensic hubs under Nirbhaya Fund targeting 60-day chargesheet turnaround.
- Mandatory SC/ST and women officers at every station with power to register FIR without delay.

Courts & Justice Delivery

- One exclusive SC/ST court and one POCSO court per district with day-to-day trial; 90-day deadline for heinous crimes.

- Strictly implement Witness Protection Scheme 2018—anonymity, relocation, livelihood support.
- Expand e-FIR, video testimony, and CCTNS integration to reduce adjournments.

Prevention & Social Change

- Constitutional morality and gender education in Class 6–12 curriculum under NEP 2020.
- Land titles and irrigation access for Dalits; SHG credit for women—economic independence reduces vulnerability.
- Real-time hate speech SOP under IT Rules 2021: mandatory takedown within 2 hours; counter-narrative by DM.

Victim-Centric Measures

- One-Stop Centres (24×7) with medical, legal, and shelter aid—at least one per district.
- Automatic compensation disbursement within 30 days of FIR under SC/ST PoA Sec 15A and BNS Sec 396 via Direct Benefit Transfer.
- NCRB to publish disaggregated data—caste/gender of victim and accused, time-to-chargesheet, reasons for acquittal.
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9. FINDINGS AND SUGGESTIONS

Key Findings

- Pattern of Underreporting and Low Conviction: NCRB 2022 records 28,522 murders, 31,516 rapes, 57,582 SC/ST atrocities. NFHS-5: 29.3% of women faced spousal violence but 86% never sought help. Conviction rates: rape 27.4%, caste atrocities

32%, rioting 19.2%. High prevalence, low reporting, lower punishment—fear of police and social stigma produce impunity.

- Structural Drivers: Caste violence is triggered by Dalit assertion, inter-caste marriage, and land/water disputes. Gender violence follows a lifecycle from sex-selective abortion to dowry death. Communal violence is driven by rumour and hate speech. State violence persists under AFSPA immunity and UAPA misuse.
- Institutional Gaps: Police at 152/lakh vs UN norm 222; 3.1 crore pending cases; Prakash Singh directives ignored in 20 states; 50+ special laws yet no central anti-lynching legislation.
- New Dimensions: Cyber-mediated violence (IT Act Sec 66E, BNS Sec 77) and online incitement linked to offline lynching remain inadequately policed. Victim compensation schemes exist in law but disbursement is delayed and awareness is low.

Suggestions

Five reform priorities emerge: (1) Legal—criminalize marital rape, enact anti-lynching

law, amend AFSPA; (2) Police—implement Prakash Singh fully, fill vacancies, deploy mobile forensic units; (3) Judicial Speed—expand fast-track courts, enforce Witness Protection Scheme, integrate technology; (4) Prevention—education on constitutional morality, economic empowerment of Dalits and women, community policing, real-time rumour control; (5) Victim Support—24×7 One-Stop Centres, automatic DBT compensation within 30 days, transparent NCRB data.
