

## Procedural Dynamics and Challenges in Prosecuting Religiously Motivated Offences in India: A Critical Analysis

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Abstract:

Religiously motivated offences in India ranging from targeted violence and property destruction to intimidation and speech-based incitement pose distinctive challenges not merely of substantive criminalisation but of criminal process. This article critically analyses India's legal response through the procedural pathway under the Bharatiya Nyaya Sanhita, 2023 (BNS), the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) and the Bharatiya Sakshya Adhinyam, 2023 (BSA). It argues that accountability outcomes are frequently determined less by the presence of penal provisions and more by how cases travel from information and FIR registration to investigation, charging, trial, and ultimately conviction or acquittal. The article maps the principal BNS provisions typically invoked in communally sensitive cases and highlights structural and operational lacunae, including inconsistent classification of bias motive, discretionary "sectioning" at the FIR stage, investigation deficits in mass-incident contexts, witness intimidation, and persistent trial delays. It further evaluates how the BNSS framework particularly in relation to registration practices, arrest and bail discretion, case management, and prosecutorial effectiveness can either safeguard fairness or enable selective enforcement. Through the lens of the BSA, the article assesses evidentiary stress points such as proof of motive, identification in crowd violence, and the authentication and integrity of digital evidence. Finally, it situates these issues within constitutional and judicial approaches to public order, equality, and free speech, emphasising the courts' remedial role as well as the limits of case-by-case interventions. The article concludes with procedural and institutional reforms aimed at improving neutrality, evidentiary rigour, and victim-witness protection without diluting due process guarantees.

**Keywords:** Religiously Motivated Offences; Hate Crimes; Communal Violence; BNS 2023; BNSS 2023; BSA 2023; FIR Registration; Criminal Investigation; Bail; Trial Process; Digital Evidence; Witness Protection; Hate Speech; Constitutional Criminal Procedure; Conviction and Acquittal.

### INTRODUCTION

Religiously motivated offences occupy a complex space in Indian criminal justice: the underlying conduct may appear "ordinary" in form of communal violence, hate speech, lynching, destruction of religious places, slurring of anti-religious comments etc, yet the motive and social meaning of the act may be anchored in hostility towards a religious group. Such offences implicate not only individual victims and accused persons, but also broader constitutional commitments to equality, dignity, fraternity, and freedom of religion. They also tend to test the criminal process in unusually acute ways: incidents often occur in groups or during heightened social tensions, evidence is quickly lost or contested, witnesses face intimidation, and the state's policing choices are publicly scrutinised for neutrality and fairness. This paper therefore approaches religiously motivated offences less as a question of "whether the law exists" and more as a question of how the law is operationalised.

Some of the most commonly problems faced by the judiciary in indicting such offences is knowing that, whether the information received or recorded is accurately correct, whether the FIR was promptly registered, whether the correct legal provisions were invoked, whether the investigation was insulated from any external influence, and whether the evidence (including digital material) that is preserved in admissible in nature. The enactment of the Bharatiya Nyaya Sanhita, 2023 (BNS), Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), and Bharatiya Sakshya Adhinyam, 2023 (BSA) has somewhat provided a timely help in reassessing these issues through the entire procedural pipeline from complaint to verdict. It is pertinent to note that while these new codes retain many functional equivalents of earlier substantive and procedural rules, they also reflect a legislative reorganisation of offences, procedures, and evidentiary concepts that requires fresh mapping and critique. Thus the intention of this paper is to show that "religious motivation" of an offence is often not captured by a single standalone provision but rather, it emerges through how police and prosecutors invoke a combination of public order, unlawful assembly, violence, intimidation, and speech-related provisions and how courts later assess intention, context, and proof.

The paper is however not free from limitations. The following include the limitation of this paper:

1. First, the paper focuses mainly on criminal law and procedure rather than civil remedies, preventive detention regimes, or broader administrative governance, except insofar as these affect the criminal process.
  2. Second, the paper does not attempt to provide a sociological explanation of communal conflict; instead, it concentrates on the legal system's institutional handling of incidents that appear to be driven by religious bias.
  3. Third, the paper treats "religiously motivated offences" as a functional category (bias motive shaping selection of victims or targets), not as a separate doctrinal offence label because Indian criminal law has historically addressed such conduct through general offences and specific speech/public order provisions, rather than through a comprehensive "hate crime" statute.
- Thus, keeping the limitations in mind, the paper shall try to address three core questions for the purpose of this research:
- i. Whether the relevant BNS provisions, as operationalised, adequately address the range of harm involved in religiously motivated offences especially where harm is collective, symbolic, or intended to terrorise a community?
  - ii. At which procedural stages under the BNSS (registration, investigation, bail, framing of charges, trial management) do such cases most commonly fail leading either to wrongful implication or to impunity and why?
  - iii. How does the BSA, particularly in relation to proof of motive and authentication of digital evidence, enable or hinder reliable adjudication in communally charged cases?

From the methodological perspective, the paper adopts a doctrinal and case-law based approach. It uses constitutional principles and judicial reasoning to identify the operative standards governing hate speech restrictions, group liability, fair investigation, and trial fairness. Major Supreme Court decisions on the following problem has also been used to substantiate the issues. In addition to this, the paper draws on the institutional reality that criminal courts frequently confront such as riot-like situations which produce fragmented narratives, identification evidence which is most of the time contested, and digital media (such as videos, forwarded messages, social media posts, etc) which remains plenty but often difficult to authenticate, preserve, and present without breaking the chain of custody.

Lastly, it is evident to note that the contribution of this paper shall be twofold. Analytically, it shall try to reframe religiously motivated offences as a process problem rather than only a penal provision problem. Even when the substantive law appears adequate on paper, weak registration practices, defective investigation, witness intimidation, and evidentiary lapses can systematically produce acquittals or, conversely, can enable selective enforcement that undermines the presumption of innocence. Normatively, the paper argues for reformation so as to improve neutrality and accuracy without sacrificing civil liberties. In totality, it contends that procedural reforms such as better documentation of bias indicators at the FIR stage, stronger witness protection, consistent digital evidence protocols, and accountable supervisory review of sectioning and investigation choices are more likely to improve outcomes than simply adding new offences.

The discussion of the paper is organised in the following manner: Part II provides a brief historical pathway to the contemporary landscape and clarifies why the current problem is best understood through procedural breakdowns. Part III maps the current legal tools under the BNS, tracks implementation under the BNSS from FIR to trial, and identifies lacunae in both law and practice, including the recurring gaps in proving motive and group liability. Part IV examines the judicial approach to communal violence and hate speech especially constitutional balancing under Articles 14, 19, 21 and 25 and assesses the courts' remedial techniques and their limitations. The article concludes by proposing targeted reforms that can make the system more consistent, rights-respecting, and capable of delivering credible verdicts in cases where religious bias is alleged.

## **2. HISTORICAL BACKGROUND TO THE CURRENT SITUATION AND THE PROBLEM**

**2.1 From colonial public-order thinking to constitutional governance:** The Indian legal system's approach to religiously charged conflict developed in close association with public order administration, where the primary institutional goal was to prevent disorder and maintain civic peace rather than to foreground individual and group rights. This orientation shaped policing methods (crowd control, preventive action, broad arrests) and also influenced how criminal law provisions dealing with group hostility and inflammatory speech were historically deployed as tools to avert unrest and govern tensions rather than as mechanisms for acknowledging targeted, identity-based harm. The constitutional transition after Independence altered the normative framework by placing equality (Article 14), life and personal liberty (Article 21), freedom of speech (Article 19(1)(a)), and freedom of religion (Articles 25–28) at the centre, while still permitting restrictions for public order and related grounds. As a result, criminal justice responses to communally sensitive incidents now operate under a dual mandate: the state must act effectively to prevent violence and punish wrongdoers, while simultaneously ensuring fairness, non-discrimination, and procedural integrity. The Judicial elaboration of Article 21 has also reinforced that criminal process must be “just, fair and reasonable,” and that procedural fairness is integral to constitutional legitimacy. This brings our concern in the present matter, since religiously motivated offences frequently test the system at precisely those points where public-order instincts and rights-based obligations can come into conflict particularly at the stages of registration, investigation, and trial.

**2.2 Contemporary problem on religiously motivated Offences:** In contemporary India, religious motivation in offending behaviour is often inferred from the selection of victims, the symbolic nature of targets, accompanying slogans or threats, and the broader context of mobilisation rather than from a single “religion-specific” offence label. Episodes of communal violence and hate speech also display a strong informational and communicational dimension: rumours, edited clips, and forwarded messages can rapidly intensify fear and hostility, affecting both the occurrence of violence and the evidentiary environment in which the state later investigates it. Certain patterns have been documented in official crime data (such as NCRB) indicating that communal incidents continue to be reported under public order-related categories, though such data must be read cautiously because recording practices, classification choices, and local policing incentives can significantly shape what is counted and how it is described. These contemporary dynamics are also visible in judicial engagements with hate speech and incitement, where courts have repeatedly emphasised the significance of context, the potential for public disorder, and the need to apply restrictions consistently with constitutional free speech principles. In practice, therefore, religiously motivated offences today commonly appear as: (i) violence and intimidation occurring during tense local events (processions, disputes escalating along identity lines), (ii) damage to property and religious or community symbols intended to communicate dominance or exclusion, and (iii) speech and digital dissemination that can normalise hostility or encourage mobilisation, while posing difficult questions for proof and admissibility.

**2.3 The core problem: why procedure becomes the decisive battleground:** The principal difficulty with religiously motivated offences in the criminal justice system is that procedural choices rather than the mere existence of penal provisions often determine whether the case results in credible adjudication. At the outset, the system must translate a lived incident into a legal record: the accuracy and completeness of the initial information, the timeliness of registration, and the way provisions are applied (“sectioning”) structure the entire later narrative. Indian courts have repeatedly treated proper registration and fair investigation as essential components of rule-of-law governance, especially where failure to register or investigate defeats the administration of criminal justice. The investigation stage is particularly fragile in group or riot-like contexts such as, identification of accused persons, attribution of specific acts within a crowd, preservation of scene-of-crime evidence, medical corroboration, and recovery of digital artefacts require competence and neutrality. When these steps are compromised, the trial becomes vulnerable to the predictable collapse of proof contradictions, missing links in the chain of custody, and reasonable doubt. At the same time, the sensitivity of such incidents creates a competing risk: discretionary or politically inflected policing can yield overbroad arrests, selective enforcement, or prosecutions framed in ways that undermine the presumption of innocence and equality before law. Both impunity and misuse erode public trust and constitutional legitimacy. A further structural challenge is that “religious motivation” is not always treated as an element requiring systematic proof; it can become either an assumption (which risks bias and misuse) or an afterthought (which risks under-enforcement and impunity). The evidentiary burden is therefore distinctive: the state must avoid communal stereotyping while still collecting concrete, admissible material that demonstrates intent, context, and the relationship between speech, mobilisation, and harm. Courts have also warned against criminal process being used as a tool for harassment, underscoring the need for careful judicial scrutiny of prosecutions that implicate speech and public disorder concerns. These dynamics make religiously motivated offences an especially revealing site to evaluate the new criminal law architecture under the BNS, BNSS, and BSA: the ultimate question is less whether the codes contain “enough” offences, and more whether the system can deliver neutral, evidence-based outcomes through a process that is fair to victims, witnesses, and the accused.

## **3. CURRENT LAW IN FORCE, LACUNAE, AND IMPLEMENTATION**

**3.1 Substantive provisions under BNS commonly relevant to religiously motivated offences:** The Bharatiya Nyaya Sanhita, 2023 (BNS) does not operate through a single, comprehensive “hate crime” chapter; instead, religiously motivated wrongdoing is ordinarily prosecuted through a combination of (a) violence and property offences, (b) group/public order offences, and (c) speech- and harmony-related offences, with motive emerging from surrounding facts rather than from a dedicated bias-enhancement structure. This architecture resembles the older approach under the Indian Penal Code, where communal incidents were addressed through general offences (murder, hurt, mischief, intimidation) plus specific provisions targeting promotion of enmity and insult to religion. Under the BNS, therefore, the substantive legal response typically involves “stacking” multiple provisions to reflect the gravity and context of the conduct: for example, a riot-like incident may be framed through unlawful assembly/rioting-type provisions together with hurt, attempt, or homicide provisions, and mischief/arson, depending on facts of the incidents. In addition, speech and representation often function as both conduct and evidence. Where slogans, speeches, posters, or online posts are part of the incident, they may be charged under BNS provisions dealing with promotion of enmity, acts prejudicial to harmony, or deliberate and malicious insults to religion, while also helping prove intent, common object, conspiracy, or abetment for the connected acts of violence. Courts have historically insisted that hate speech adjudication must be context-sensitive and constitutionally bounded: mere offensiveness is not the legal test; the state must show a legally cognisable connection to public disorder, incitement, or the prohibited harm the provision targets. This means that, in a religiously motivated offence prosecution, the substantive BNS provisions will only be as effective as the investigation's ability to collect evidence showing intent, audience, reach, and proximity to harm.

Finally, BNS prosecutions in communal contexts often invoke liability doctrines that are especially important in group incidents such as common object, common intention, conspiracy, and abetment because violence and intimidation are frequently carried out by groups rather

than isolated individuals. The legal challenge is that group liability cannot be inferred simply from presence or community identity; it requires proof linking each accused to participation and the group's unlawful purpose, which in turn depends on credible identification and corroboration. In short, the substantive law can be "available," but it is procedurally fragile: if the case narrative does not specify acts, roles, weapons, and the manner of participation, courts may find the evidence insufficient to sustain convictions.

**3.2 BNSS implementation chain (FIR to Trial): Where Procedure Shapes Outcome:** The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) governs the path from first information to trial, and religiously motivated cases tend to be won or lost on procedural performance at four points: registration, investigation, pre-trial decision-making (including bail), and trial management. The starting point remains the duty to record and register information disclosing a cognizable offence, a principle strongly affirmed by the Supreme Court to curb refusal and delay in FIR registration. In communally sensitive incidents, delay can be especially damaging because it allows scenes to be altered, CCTV to be overwritten, digital posts deleted, and witnesses pressured; it also permits the narrative to be politically or socially reframed before a stable record exists. Registration and "sectioning" is a recurring practical problem, it is not only limited to the registration of an FIR, but rather how it is written. It must include certain aspects such as, whether it captures religious slurs, or does it target a selected group, or threats tied to identity, damage to religious symbols, or the presence of organised mobilisation. If such bias indicators are omitted at inception, later efforts to prove motive can appear like embellishments. Cross-FIRs and counter-complaints also complicate registration; they may reflect genuine competing versions, but they can also be deployed strategically to dilute the victim narrative and create bargaining leverage. BNSS procedures relating to recording information and statements are therefore central to the neutrality and completeness of the factual record.

Apart from registration, the investigation stage is also decisive because religiously motivated incidents often involve (i) multiple accused, (ii) crowded scenes, (iii) hurried violence, and (iv) reliance on digital evidence. Courts have treated "fair investigation" as part of the Article 21 guarantee, requiring that the investigation be unbiased, honest, and in accordance with law. In practice, fairness is not only about absence of malice; it is about competence: preserving the scene, conducting timely medical examinations, recovering weapons, collecting CCTV, and identifying accused through lawful identification procedures. Where the prosecution relies on digital videos and posts, investigators must also preserve devices, obtain platform data where possible, maintain chain of custody, and document extraction properly; otherwise, the defence can generate reasonable doubt regarding authenticity and tampering.

Looking from the trial and prosecution perspective, delays in trail may increase hostility/forgetfulness, thereby make witnesses vulnerable to pressure, and weaken their confidence in the institutions. Witness intimidation is also a structural problem: even where formal schemes exist, their operationalisation is uneven. The Supreme Court has acknowledged the necessity of witness protection to ensure the integrity of trials and the administration of justice. In cases, where witnesses turn hostile, courts often require corroboration beyond bare assertions; the prosecution's ability to present consistent documentary, medical, and digital evidence then becomes critical. Thus, BNSS procedures relating to witness examination, use of previous statements, and trial scheduling can materially influence outcomes.

**3.3 Lacunae and stress points under the new regime (BNS/BNSS/BSA):** The most significant lacunae in addressing religiously motivated offences are not always textual gaps in the BNS, BNSS, or BSA, but institutional and classificatory weaknesses that repeatedly undermine proof and fairness. Some of the lacunae includes: First, India lacks a consistently implemented mechanism for bias-motive tagging at the FIR and investigation stage. Without structured recording of bias indicators slurs used, identity-based targeting, symbolic destruction investigations may default to generic "law and order" framing, which can obscure motive and reduce accountability. At the same time, any motive-tagging must be designed carefully to avoid predetermining guilt or enabling communal profiling.

Second, there is high discretion and variability in "sectioning" and investigative priorities, and limited transparency regarding why certain provisions are invoked or omitted. The Lalita Kumari framework was intended to reduce discretion at the registration stage by mandating FIR registration for cognizable offences, but implementation gaps persist, and supervisory accountability is uneven.

Third, digital evidence dependence has outpaced capacity. The BSA's approach to electronic/digital evidence (and the continued judicial insistence on authenticity and reliability) means that poor extraction practices, missing metadata, and broken chain of custody can be fatal at trial. Fourth, witness vulnerability remains a persistent stress point. Even with judicially endorsed witness protection frameworks, on-ground implementation depends on resources, local policing attitudes, and prosecutorial coordination. In communally sensitive cases, witnesses often live near the accused or within the same local political ecology, making intimidation or informal settlement more likely.

Fifth, speech-related prosecutions remain susceptible to both under-enforcement and misuse: vague or overbroad application can chill legitimate expression, while selective inaction can enable sustained targeting. Constitutional speech doctrine requires narrow tailoring and context-based assessment, yet this discipline is inconsistently applied in police practice.

In conclusion, the new codes provide a reorganised legal framework, but the central determinants of justice in religiously motivated offences remain procedural: accurate recording, competent and neutral investigation, reliable proof (including digital authenticity), and robust witness protection. Without these, substantive provisions risk becoming either ineffective (leading to impunity) or excessively discretionary (leading to selective enforcement).

#### **4. JUDICIAL APPROACH, CONSTITUTIONAL BALANCING, AND REMEDIES**

**4.1 Constitutional framework: equality, liberty, speech, religion, and public order:** Indian courts approach religiously motivated offences through a constitutional matrix in which equality and non-discrimination (Article 14), life and personal liberty and fair procedure (Article 21), freedom of speech (Article 19(1)(a)), and freedom of religion (Articles 25–28) coexist with the state's power to impose reasonable restrictions in the interests of public order and related grounds. This structure means that adjudication in communally sensitive cases is never only about penal provisions; it is also about whether state action registration, investigation, arrest, prosecution, and speech restriction meets constitutional standards of fairness, neutrality, and proportionality. The Supreme Court's interpretation of Article 21 in Maneka Gandhi established that criminal process must be "just, fair and reasonable," a principle that shapes judicial review of investigative failures, selective enforcement, and abusive prosecutions. At the same time, the Court has consistently held that speech restrictions must be applied with doctrinal discipline: only those forms of expression that meet the legally relevant threshold (such as incitement or a proximate nexus to public disorder) may be criminalised, ensuring that hate speech regulation does not become a tool for viewpoint suppression.

**4.2 Speech, incitement, and "hate speech" adjudication: doctrinal guardrails:** A central judicial task in religiously motivated offence cases is distinguishing between protected expression and criminally punishable speech. The Supreme Court's approach has repeatedly emphasised context, proximity, and tendency. In Kedar Nath Singh, the Court limited the reach of sedition-like logic by holding that only speech involving incitement to violence or the tendency/intention to create public disorder can be punished, thereby rejecting a broad criminalisation of mere disaffection or harsh criticism. Later, S. Rangarajan underscored that anticipated disorder must have a proximate and direct nexus to the expression; far-fetched or speculative threats cannot justify suppression. In Shreya Singhal, the Court reinforced the advocacy–incitement distinction and cautioned against vague standards that enable arbitrary enforcement, which is particularly relevant where online speech is used to mobilise hostility or panic.

These doctrinal guardrails matter in two ways. First, they set the threshold of proof: prosecutors must demonstrate not merely that content was offensive, but that it falls within the statutory and constitutional limits often requiring evidence about audience, reach, timing, and the likelihood of disorder. Secondly, they shape remedial choices: where police invoke overbroad provisions or fail to link speech to legally cognisable harm, courts may quash proceedings to prevent abuse of process, applying principles developed to stop criminal law from being used as harassment. Conversely, where the state fails to act against incitement that plausibly threatens violence, courts have sometimes used supervisory jurisdiction to demand accountability and ensure that constitutional duties of protection are not hollow.

**4.3 Communal violence and group liability: evidentiary scrutiny and fairness concerns:** In prosecutions arising from communal violence, courts frequently confront the difficulty of proof in crowd settings. The key judicial concern is to avoid two errors simultaneously: (i) allowing serious violence to go unpunished because perfect evidence is unattainable in mass incidents, and (ii) allowing convictions based on vague, omnibus allegations that effectively punish identity, presence, or association. The Supreme Court's approach in unlawful assembly cases, including *Masalti*, illustrates this balancing method: courts may accept that eyewitness testimony can prove group participation, but they also caution that factional hostility and community tensions heighten the risk of false implication, requiring careful scrutiny of identification, consistency, and corroboration.

This approach has practical implications for "religious motivation" proof. Courts generally will not treat communal context as a substitute for evidence; motive must be established through admissible facts what was said, how targets were chosen, what symbols were attacked, and whether planning or mobilisation can be shown. Where investigations are sloppy or partisan, courts are more likely to extend benefit of doubt. Where investigations are comprehensive medical evidence aligns with eyewitnesses, recoveries are credible, digital evidence is authenticated courts are more willing to sustain convictions even in complex group incidents.

**4.4 Fair investigation and institutional accountability: judicial supervision:** A distinctive feature of Indian constitutional criminal procedure is the judiciary's insistence that investigation must be fair, and that fairness is not merely a matter of executive grace but is tied to Article 21. In *Babubhai*, the Court treated fair investigation as part of the constitutional guarantee of life and liberty and emphasised that investigation must be unbiased and in accordance with law. Similarly, the Court's insistence in *Lalita Kumari* on mandatory FIR registration for cognizable offences addresses a common point of failure refusal or delay in recording complaints which is especially damaging in communal incidents where early evidence preservation is crucial. When investigative failure threatens justice, courts have adopted a range of remedies: ordering re-investigation or further investigation by a different agency, transferring investigations in exceptional cases, monitoring investigations through periodic status reporting, and issuing directions aimed at insulating the process from local influence. These remedies reflect a judicial understanding that the legitimacy of the criminal process depends on the credibility of the investigative record, particularly in cases that carry high social stakes.

**4.5 Witness protection and trial integrity: keeping prosecutions viable:** Another recurring judicial intervention concerns witness vulnerability. Communal cases often involve accused persons with local influence and witnesses who reside in the same area, producing intimidation risks and high rates of hostility. The Supreme Court's endorsement of the Witness Protection Scheme, 2018 in *Mahender Chawla* recognises witness security as integral to fair trial and the administration of justice. In practice, the effectiveness of witness protection depends on implementation threat assessment, relocation where necessary, anonymity or identity masking in appropriate cases, and coordination between police and prosecution. Courts may also use bail conditions to protect witnesses, balancing liberty with trial integrity considerations consistent with bail jurisprudence that recognises tampering and intimidation risks as relevant factors.

**4.6 Remedies for misuse: quashing, bail safeguards, and constitutional discipline:** Communitally sensitive prosecutions are vulnerable to politicisation and selective enforcement, this is the reason why courts have developed tools to prevent misuse. The *Bhajan Lal* categories for quashing remain a key doctrinal reference point for preventing abuse of process where allegations do not disclose an offence, are manifestly mala fide, or are legally untenable. In speech-related cases, such remedies are particularly important because criminal process itself can become punishment through prolonged litigation and chilling effects. Courts therefore tend to scrutinise (i) whether statutory ingredients are actually alleged, (ii) whether the investigative basis is credible, and (iii) whether constitutional speech standards are respected.

At the same time, judicial remedies also address under-enforcement. Where the state fails to discharge its protective obligations by refusing registration, conducting biased investigations, or failing to prosecute credible incitement courts may require corrective steps, reflecting the constitutional expectation that the state protect life and equality without discrimination. The overarching judicial posture is thus best understood as a three-part balancing act: (a) protecting victims and vulnerable communities through effective law enforcement, (b) protecting accused persons and political dissent through due process and speech doctrine, and (c) protecting the legitimacy of institutions through accountability and fair investigation.

## 5. RECOMMENDATIONS AND THE WAY FORWARD

**5.1 Standardise bias-indicator documentation at the FIR stage (without presuming guilt):** A workable reform is to introduce a structured "bias-indicator" annexure to the FIR and early case diary, limited to objective, observable markers such as identity-linked slurs, targeted selection of victims/locations, symbolic destruction (places of worship, religious markers), prior threats, or contemporaneous digital mobilisation so that motive is recorded early without converting community identity into presumptive guilt. This would address a recurring evidentiary weakness: where the initial record omits bias markers, later attempts to prove motive appear like improvements and are easily impeached at trial. The annexure should be subject to supervisory review, and its purpose should be expressly limited to improving neutrality and evidence collection rather than "tagging" communities. This recommendation flows from the constitutional duty to ensure criminal procedure is just, fair and reasonable, and from the Court's insistence that cognizable offences must be registered promptly and accurately.

**5.2 Create a "golden hour" evidence protocol for communal/riot-like incidents:** Group violence cases repeatedly collapse because early evidence is not preserved. A BNSS-aligned protocol should mandate a golden hour checklist: immediate scene preservation, rapid medical examination, seizure of weapons and clothes, mapping of CCTV sources, securing of DVRs before overwrite, photographing/videographing damage, recording of initial witness descriptions, and early identification procedures where permissible. Such protocols reduce discretion, improve professionalism, and limit allegations of partisan investigation. They also support judicial expectations of fair investigation under Article 21 and reduce the scope for later remedial litigation seeking transfer or re-investigation due to investigative lapses.

**5.3 Strengthen digital evidence handling under the BSA :** Religiously motivated incidents increasingly rely on electronic material videos, posts, call data, location trails yet admissibility and reliability failures remain common. The state should invest in (i) station-level training on lawful seizure and preservation of devices, (ii) district-level digital forensic units for timely extraction, and (iii) standard chain-of-custody documentation aligned with the BSA's electronic record framework. The objective is not to "increase convictions" mechanically, but to ensure that courts receive evidence that is authentic, verifiable, and fairly collected. The Supreme Court's insistence on compliance discipline for electronic evidence under the earlier Evidence Act regime shows how easily digital proof can fail if procedural safeguards are ignored; the BSA era requires the same seriousness, adapted to the new statutory language.

**5.4 Witness protection as a default operational plan :** In communally sensitive cases, witness intimidation is predictable rather than exceptional. Police and prosecution should treat witness protection as an early, routine planning task: threat assessment within days of the incident, secure communication channels, non-disclosure of addresses where lawful, relocation where necessary, and strict bail conditions preventing contact or area entry when intimidation risks are shown. This aligns with the Supreme Court's recognition that witness protection is integral to fair trial and the administration of justice, and it reduces witness hostility that otherwise defeats prosecutions irrespective of the substantive law.

**5.5 Prosecutorial screening and "role-based" charge framing in group incidents:** A major fairness and effectiveness reform is robust pre-charge prosecutorial screening, especially for large group cases. The prosecution should insist on role-based case theory: each accused must be linked to specific acts, presence with weapons, leadership/instigation, or other legally relevant participation, rather than being bundled into omnibus allegations. Courts have warned in group violence jurisprudence that factional hostility increases the risk of false implication, and careful scrutiny is required; prosecutorial screening operationalises this judicial expectation in advance, reducing both wrongful implication and later acquittals due to weak attribution.

**5.6 Neutral oversight and transparency: reducing selective enforcement risks:** To address allegations of selective enforcement (either under-enforcement or over-enforcement), oversight mechanisms should be strengthened: written supervisory reasons for "sectioning," documented rationale for arrest/non-arrest of named accused, and periodic internal review for communally sensitive cases. Where needed, courts already possess remedies to curb abuse of process through quashing jurisprudence; however, better internal transparency can reduce the need for litigation and improve public confidence. Oversight also supports constitutional equality by reducing outcomes that appear determined by local power rather than evidence.

**5.7 Judicial case management in sensitive prosecutions :** Even strong investigations weaken if trials drift. Courts can improve outcomes through active case management: early framing of issues, prioritised recording of key witnesses, in-camera or protected witness measures where lawful, and strict scheduling to reduce adjournment culture. Since communally sensitive trials often have community-wide stakes, delay itself can become a justice failure both for victims awaiting accountability and for accused persons facing prolonged stigma. Speed and fairness are not opposites; they are mutually reinforcing under Article 21's fair procedure requirement.

The overarching recommendation is a shift from a "public order management" approach to a proof-and-fairness model: early neutral recording of bias indicators, professional evidence preservation, reliable digital forensics, robust witness protection, and role-based prosecution. This framework reduces impunity by strengthening viable cases, and it reduces misuse by constraining discretion and preventing identity-led prosecutions.

## 6. CONCLUSION

Religiously motivated offences pose a distinctive challenge for India's criminal justice system because they combine individual criminal conduct with group-based targeting, heightened public emotion, and an increased risk of both impunity and misuse of process. While the BNS, BNSS and BSA provide the formal legal framework for prosecution, the decisive question in practice is whether the system can convert a volatile social incident into a neutral, evidence-led, constitutionally compliant criminal case beginning with accurate registration, continuing through fair and competent investigation, and ending in a trial protected from intimidation and delay. The constitutional baseline remains that state action in criminal law must be "just, fair and reasonable," and that equality before law must be preserved even in communally charged contexts. In speech-related matters, courts insist on context and constitutional thresholds particularly the need to distinguish protected advocacy from punishable incitement and to demand a proximate nexus with public disorder where restrictions are applied. In group violence prosecutions, courts have recognised the real difficulties of proof while simultaneously warning against convictions based on vague or omnibus allegations, and they require careful scrutiny of identification and attribution in factional settings. These standards show that the legitimacy of outcomes depends not only on punitive capacity but on procedural integrity, with fair investigation, lawful evidence collection and witness safety functioning as prerequisites rather than optional improvements.

Accordingly, the way forward is best understood as a "proof-and-fairness" model: structured early recording of bias indicators without stereotyping, golden-hour preservation of evidence, strengthened digital forensics and chain of custody under the BSA, role-based prosecution in group incidents, and operational witness protection supported by bail conditions and judicial case management. These reforms reduce wrongful implication by constraining discretion, and reduce impunity by ensuring that genuinely culpable offenders can be proved guilty through admissible, reliable evidence. If implemented consistently, this approach aligns with constitutional commitments to equality, liberty, and public order, and it strengthens institutional credibility in one of the most socially sensitive categories of criminal case.

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