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From Marital Infidelity to Homicide: A Criticism Analysis of Motive, Criminal Liability and Spousal Killing under Indian Criminal Law

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ABSTRACT

Spousal homicide is a complex crime involving a criminal and victim that are connected not only by crime but also emotional threads. The problem of intimate killings is linked with the power dynamics between genders. Such killings are different from those crimes of passion that are committed by strangers because in the spouse killing, the relationship between the victim and killer is built on a long and close family relations. The central focus in spousal homicide is the element of motive which can arise from allegations of partner's straying or which can arise from allegations of a partner's straying.

Under Indian criminal law, which has been traditionally guided by the Indian Penal Code 1860 (IPC) and now transitioning to Bharatiya Nyaya Sanhita 2023 (BNS), courts are tasked with the precarious responsibility of distinguishing between pre-planned murder and acts of passion stemming from an overwhelming loss of self-control.

This paper attempts to critically examine the evidence and substantive role of the element of motive in the context of spousal homicides, and the various ways Indian courts have interpreted the concept of provocation in the wake of accusations of marital unfaithfulness. The paper further attempts to analyse the statutory distinction between Murder (IPC Section 300 / BNS Section 101) and Culpable Homicide not amounting to Murder (IPC Section 299 / BNS 100) through the lens of exception 1 (grave and sudden provocation). A gendered analysis of the differing criminal justice responses to male-initiated homicides on the grounds of marital unfaithfulness and female-initiated homicides on the grounds of battered woman syndrome is undertaken. More over the paper aims to critically evaluate the Joseph Shine jurisprudence, as well as recommend potential statutory amendments under the new criminal law framework for a more equitable adjudication of crimes of passion in light of the newly transitioned BNS.

Keywords: Extramarital affair, Culpable homicide, Murder

1. INTRODUCTION

Homicide committed in the domestic sphere is one of the most paradoxical aspects of law, for while the law often conceptualizes violence as an external happening committed by outsiders it is in practice, the sanctum that shelters the most severe forms of interpersonal violence. The phrase 'from marital infidelity to homicide' encapsulates the unique progression of events in case where the husband kills the wife or vice versa, from an incident of infidelity that constitutes a perceived or alleged breach of marital trust, leading to a fatal act of physical violence.

- Linguistic Analysis: From Marital Infidelity to Homicide

At the core of the phrase 'from marital infidelity to homicide', lies the progression of an extra-marital affairs from an event that constitutes a private civil wrong into a crime punishable under the penal law.

The Trigger (Marital Infidelity): Marital infidelity encapsulates extra-marital relations often sexual. While in the past, infidelity was often perceived, in law as well as in popular conscience, as a crime committed against the husband and an offence against societal morals by virtue of the husband's presumed proprietary interest in his wife current legal trends recognise it as a civil wrong.

The sudden uncovering of an infidelity: Be it through a harmful sight, a careless word, or the slow burn of feeling. It instantly sparks intense feelings of embarrassment, possessive anger, deep grief, and a total breakdown of trust.

The Fatal Outcome (Homicide): The psychological turmoil then transforms into physical violence, which takes the forms of grievous bodily harm or death.

When brought before the court, the question then transforms into one of whether there was an act committed with an intention to kill or cause grievous bodily harm (*actus reus*) and whether there was a guilty mind (*mens rea*) behind the act. While intent is the deciding factor for conviction for murder (Section 300, IPC / Section 101, BNS) motive adds to the context of the crime.

Since spousal killings, which comprise almost all of the killing that take place on account of marital infidelity, are most always private acts, with no third party present as an eyewitness motive is the single most vital factor in determining the punishment for such crimes. It has a double responsibility before the court¹.

The Prosecution's Narrative: By introducing marital infidelity, the prosecution attempts to establish a pre-existing, deep-seated motive to eliminate the spouse or the paramour, or disrespectful intention within the meaning of Section 300 IPC / Section 101 BNS.

The Defence's Shield: The defence on the other seeks to use the fact of marital infidelity to prove that there was 'grave and sudden provocation' (by revealing the affair) to reduce the punishment to Culpable Homicide Not Amounting to Murder (Section 299, IPC / Section 100 BNS) under exception 1 to Section 300 in IPC/BNS. They depend on the doctrine of sudden, although grave, prove that the killing was not pre-planned.

- Examining intimate partners violence through a gender focused lens.

A critical examination of the phase reveals that while law tends to view marital infidelity in a gender-neutral manner that act of killing in its wake as the psychological trauma born by the victims are deeply gendered.

While men who kill in the wake of marital infidelity tend to do so out of possessive rage of feelings of betrayal and the law seeks to punish them for the 'dishonour' they feel on account of the infidelity (by virtue of being viewed as 'proprietary') women's murders of their partners are either pre-planned revenge or occur when they are in a state of 'battered woman syndrome' where years of abuse have pushed them to kill in self-defence. In the case of women, the law often fails them by applying the doctrine of 'sudden provocation' when the provocation was sustained and the killing was not done on a 'sudden' urge but after years of psychological and physical abuse.

Following the Supreme Court's *Joseph Shine V. Union of India*² judgement which held that Section 497 of the IPC was sexist and did not reflect the liberal law of free India adultery has lost its status as a crime. However, it still continues to be most 'effective' reasons for crime such as murder and culpable homicide not amounting to murder.

This paper critically analyses this 'transition' from marital infidelity to homicide and examines how Indian courts have weighed motive, applied defences and responded to the gendered intricacies in cases of marital infidelity within the framework of the BNS, 2023.

2. STRUCTURAL PROBLEM IN ASSESSING MOTIVE AND INFIDELITY

When assessing spousal killing are private matters happening in the privacy of the shared home, the court have to rely on circumstantial evidence which makes determination of whether an act was committed on the spur of the moment versus a pre-planned killing problematic.

2.1 Evidentiary Blind Spot in the Domestic Sphere

Since spousal killings are private matters happening in the privacy of the shared home, the court have to rely on circumstantial evidence which makes determination of whether an act was committed on the spur of the moment versus a pre-planned killing problematic⁴⁻⁵.

Moreover, the surviving spouse's allegations of marital infidelity could be exaggerated or imagined in order to bring in the mitigation jurisdiction of exception 1 to 300 IPC / Section 101 BNS (Grave and Sudden Provocation).

2.2 The Subjective Issue of 'Cooling Time'

The duration of the "cooling time" between the provocation and the fatal relation serves as a vital metric for the applicability of Exception 1. Courts struggle to determine this 'cooling time' and the subjective determination of the same leads to misapplication of the law measure.

2.3 Gender Double Standards and 'Honor' killing

Gender bias is deeply fixed within the legal definition of 'provocation' and its reliance on the 'reasonable man' fails to account for gendered realities by underlying gender assumption.

¹ Trimukh Maroti Kirkan V. State of Maharashtra, (2006) 10 SCC 116

² Joseph Shine V. Union of India, (2019) 3 SCC 39

³ Bharatiya Nyaya Sanhita, 2023, Government of India

⁴ Sharad Birdhichand Sara V. State of Maharashtra, (1984) 4 SCC 166

⁵ Trimukh Maroti Kirkan V. State of Maharashtra, (2006) 10 SCC 681

Male 'possessive' rage has been considered a reasonable excuse for spousal homicide. If the killing is done immediately upon discovering the spouse's unfaithfulness, the honour of the killer is not at stake. However, the concept of 'possessive' and 'honor' is used to justify a male's sense of ownership over his wife. There is a tacit approval in law for male possessive instincts.

When women kill their abusive husbands, it is often not an impulsive decision⁶. The abuse is usually across a prolonged period of time and such killing cannot be mitigated under exception 1. In these cases, the battered wife syndrome or the concept of prolonged provocation needs to be applied.

3. DETAILED CASE LAW ANALYSIS & PRECEDENTS

3.1 Inherent difficulties in assessing infidelity in spousal homicide

There are serious evidential, psychological and systematic challenges assessing spousal homicides committed in the context of allegations of unfaithfulness.

Evidential Blind Spot in the Domestic Domain: Since spousal homicides occur in the domestic domain without external witnesses, courts primarily rely on circumstantial evidence and surviving spouses frequently claim infidelity in order to take advantage of exception 1 to Section 300 IPC / Section 101 BNS⁷.

Cooling period is objectively measured by clocks out psychologically traumatized individual don't recover linearly: A delayed response to stimuli can be mistaken for premeditation.

Double Standards Around Gender: When husbands commit murder based on possessive jealousy, they have historically been able to take advantage of the doctrine of wounded respect. Wives who suffer physical abuse for a long period may not be legally recognised as having acted due to a sudden loss of self control. Courts have used Battered Women Syndrome (BWS) or the doctrine of sustained provocation to address this challenge.

3.2 Landmark authorities on grave and sudden provocation and the cooling off doctrine

1. The Standard of "Grave and Sudden Provocation" and "Cooling Time"

K.M. Nanavati V. State of Maharashtra (1962 AIR 605)

The Nanavati ruling on spousal homicides and the concept of cooling time is one of the most influential precedents on marital infidelity as grave sudden provocation.

Facts: Commander-in-Chief K.M. Nanavati learned of his own wife Sylvia's extra-material affair with businessman Prem Ahuja when she verbally confessed the affair. Nanavati left his family at a movie theatre, he returned to his shop to fraudulently buy a loaded revolver and then went to Ahuja's flat, where he attack and kill him.

The defence sought to apply exception 1 to section 300 IPC on the ground that Sylvia's confession and Ahuja's disdainful comments constituted grave and sudden provocation, whereas the prosecution argued that there was sufficient "cooling time" since there was a three hours interval between the initial provocation and the homicide⁸.

Supreme Court's Decision: The Supreme Court upheld a conviction for murder (Section 302 IPC), holding:

The test of 'grave and sudden provocation' should be judged by whether a person of the same social background and upbringing would lose self-control.

Verbal confession could be held to be grave provocation but the passage of time between the provocation and the response is decisive in indicating whether the accused was acting out of passion or not.

A duration of three hours provides sufficient 'cooling time' for a person to regain self-control.

The pre-meditation element is also proved by the fact that Nanavati went to his ship to get a loaded revolver.

2. Doctrine of Sustained Provocation

Poovammal V. State (1990 Cri LJ Madras HC)

The Madras High Court recently changed how we look at self-defense in abusive marriages. In a case where a wife killed her husband after years of constant domestic abuse, the court applied a rule called 'sustained provocation.' This means the law finally acknowledges the heavy mental toll of long-term trauma. Instead of viewing her final reaction as a random, unprovoked attack, the court treated it as the absolute breaking point. They pointed out that human emotions don't move in a straight line. What looks like a sudden explosion of anger is often a slow-burning fuse lit by years of humiliation, where one final straw causes everything to erupt.

3. Decriminalization of Adultery

Joseph Shine V. Union of India (2018 2 SCC 189)

Constitution Bench: A constitution bench of the Supreme Court decriminalized adultery (Section 497 of IPC) by ruling the treating a spouse as a property was an infringement of personal dignity (Articles 14 and 21 of the Indian constitution). While this ruling has decriminalized adultery, it continues to be a contextual backdrop for crimes of passion and there are several precedents post Joseph Shine which indicate that infidelity will continue to be assessed as a subjective shock rather than a violation of "husbandly ownership".

⁶ Constitution of India, Article 14 and 21 – equality before law and personal liberty

⁷ Trimukh Maroti Kirkan V. State of Maharashtra, (2006) 10 SCC 681

⁸ K.M. Nanavati V. State of Maharashtra, AIR 1962 SC 605

3.3 Real life cases of intentional & staged accidents

1. The 'Blue Drum' cases of cold storage

The Blue Drum cases are a series of spousal homicide cases where the accusers and accused's paramour conspired to pre-meditatedly kill the victim by using large industrial plastic drums with salt, cement or chemical preservatives to keep the bodies hidden inside them for weeks, months or even years.

Facts: In cases that have occurred in Meerut, UP and some cases in Chhatarpur, MP; individual conspired with their extra-marital partners to get rid their spouse weeks in advance. After drugging or suffocated the victim, they placed the body in large industrial plastic drums, and covering it with salt or concrete before sealing the containers to hide the smell of decay.

Criminal Conspiracy (Section 120B, IPC / Section 61, BNS): Indisputable evidence of prior planning is provided by the purchases of these industrial drums and chemical preservatives.

Evidence of Destruction of Evidence (Section 201, IPC / Section 238, BNS): Active concealment by the accused and accused's lover ensures that the accused cannot take advantage of Exception 1 (grave and sudden provocation) and the prosecution achieves conviction on the charges of premeditated murder (Section 302 IPC / Section 101 BNS).

2. Stages Accidents of Cliff and Hill-Pushing

An example of pre-meditation pre consummation homicide involves a person's spouse begin lured to a scenic hill or cliff and pushed over the edge and the surviving spouse reports the incident to local authorities as an accident.

Facts: There are several such cases of spousal homicide where the accused and accused's paramour lure the victim to scenic spots (in Morni Hills, Haryana and Kodagu / Chikkamagaluru, Karnataka). The victim was pushed while posing for a photo near a deep gorge, but the surviving reported the fatal plunge to local authorities as an accident.

Digital Forensics (Section 65B IEA / Section 63 BSA): Call Detail Records (CDRs), encrypted communication, search history / history of searches that show a pre-planned meeting at a remote drop-off or burial site, are incriminating evidence of conspiracy.

Crime Scene Reconstruction: Forensic ballistics and analysis of the terrain showed that the impact of the victim's body being thrown over the edge of the security fence could not have been achieved by a slip or accident. Thus, conviction on the charges of conspiracy and murder were secured.

4. THE SUBSTANTIVE CRIMINAL LAW FRAMEWORK

4.1 Decoding India's New Penal Code: Replacing the IPC to BNS

In order to assess the legal position of spousal homicides, India's criminal law system contains a comprehensive range of statutory provisions from the Indian Penal Code, 1860 (IPC) and its replacement the Bharatiya Nyaya Sanhita, 2023 (BNS).

Under Indian statutory law , Culpable Homicide is the genus and murder is the species⁹. By law, all murders are considered culpable homicides, but they don't all cross the line into murder. The court explained this difference clearly in the landmark 1976 Rayavarapu Punnayya case¹⁰. When a spouse kills their partner over cheating, the trial's main aim is to figure out the exact legal charge

The Basics of Culpable Homicide (Section 299 IPC / Section 100 BNS):

This law defines the baseline for unlawful killing in India. A person can be charged with this offence if they cause someone's death through an act done with:

- Intent to kill: The deliberate purpose to end a life.
- Intent to harm: The deliberate goal to cause bodily injuries that are likely to be fatal.
- Knowledge of danger: The clear awareness that what they are doing is likely to cause death.
- Murder (Section 300, IPC / Section 101, BNS): Culpable homicide amount to murder when the intention or knowledge of the accuse meets any one of the four statutory conditions specified under the relevant provisions. Under either Section 302 IPC or Section 101 (1) BNS, the punishment for murder remains either death or imprisonment for life, together with a fine.

Grave a sudden provocation (Section 300 Exception 1 IPC / Section 101 (1) Exception 1 BNS) : If an offender, whilst deprived of self control by grave and sudden provocation, causes the death of the person who gave the provocation, the offence is reduced to culpable homicide not amounting to murder.

Culpable homicide not amounting to murder (Section 304, IPC / Section 105, BNS) : This provision order the punishment for offenses falling under Exception 1 of Section 300 of the IPC of section 101 of the BNS, as well as any other corresponding exceptions. It is further divided into two parts: Part 1 applies to acts that are done with the intention of causing death or deadly injury (punishment with imprisonment for life or up to ten years) and Part 2 applies when the act is done merely with knowledge, without intention (punishment with imprisonment for up to ten years).

Criminal conspiracy (Section 120 B, IPC / Section 61, BNS) : This provision applies to two or more persons agreeing to commit an illegal act. In cases of spousal homicide, it is generally applied when a husband or wife colludes with a lover to execute a planned killing.

⁹ Bharatiya Nyaya Sanhita, 2023, Section 101

¹⁰ State of A.P. V. Rayavarapu Punnayya, (1976) 4SCC 382

Causing disappearance of evidence (section 201, IPC / section 238, BNS): This law punishes anyone who knows a crime happened and tries to help the killer by destroying evidence or lying to the police.. Prosecutors usually bring this charge when someone hides the body, uses chemicals to preserve it, or fakes an accident.

4.2 Deconstructing the Statutory Boundary: Section 299/100 vs. 300/101

To award punishment for intimate partner violence, the court adopts the three-stage test as per Rayavarapu Punnayya:

Stage 1 : To determine the existence of Actus Reus and basic intent for culpable homicide. The court first analyzes whether the accused has committed an act that caused the victim's death.

Stage 2 : To evaluate enhanced risk for murder. The court analyzes if the act of the accused satisfies the statutory threshold for murder as per Section 300 IPC/101 BNS. The determination is based on whether the risk was "only likely" (Section 299 IPC/100 BNS) or "imminently dangerous and sufficient in the ordinary course of nature to cause death, [Section 300 IPC/101 BNS] . "

Stage 3 : To examine if any of the statutory exceptions for murder (culpable homicide) apply. The court examines if the act of the accused falls under any of the exceptions of Section 300 IPC, particularly Exception 1 for grave and sudden provocation.

4.3 The Four Escalation Clauses of Section 300 IPC / 101 BNS

Culpable homicide can be upgraded to murder if the prosecution proves any one of the four clauses of Section 300 IPC / 101 BNS.

First Clause: The accused has committed an act with a deliberate intention to cause death. Second Clause: The accused has committed an act with the intention of causing bodily injury that the offender knew, or had reason to believe, was likely to cause the death of the person to whom the injury was inflicted (e.g., the victim's pre-existing medical condition).

Third Clause: The accused has committed an act with the intention of causing bodily injury, and the injury the offender intended to inflict was of a kind likely to cause death (objective medical assessment).

Fourth Clause: The act is of a nature imminently dangerous to cause death or such bodily injury as is likely to cause death, was committed without any lawful excuse.

In the context of an intimate partner homicide, the degree of force used to resolve the dispute is critical. For instance, if in the heat of an argument over another man, the husband gave his wife a light push with his elbow that led to an unforeseen fatal injury, it would be an act "likely to cause death" under Section 299 IPC / 100 BNS. On the other hand, if the husband used a weapon and shot his wife, or stabbed her with sufficient force to cause severe injury or death, or suffocated her, it would fall under the Third or Fourth Clause of Section 300 IPC / 101 BNS.

2. Exception 1 to 300 IPC / 101 BNS: Grave and Sudden Provocation

When a spouse kills the other after being accused of unfaithfulness, the defense counsel invokes Exception 1 to 300 IPC / 101 BNS for grave and sudden provocation. Specifically, the text of the exception states: culpable homicide is not murder if it is committed by a person deprived of the power of self-control by grave and sudden provocation, causing the death of the person by whose act the provocation was received, or the death of any other person by mistake or accident¹¹.

The Four Cumulative Legal Prerequisites for Exception 1

To prove that the accused falls under Exception 1, the defense counsel must prove the following four cumulative legal prerequisites based on case law:

The nature of the provocation received must be grave, that is, it would cause an ordinary person of the same social standing as the accused to lose power of self-control. (The test is objective not subjective).

The provocation must be sudden and unanticipated.

The power of self control must have been lost when the accused committed the act resulting in the victim's death.

The killing must have occurred immediately after provocation. If there is a cooling-off period before the accused killed the victim, then it would defeat the applicability of Exception 1.

The Three Statutory Provisos that Negative Exception 1

Exception 1 to 300 IPC / 101 BNS has three statutory provisos, and if any of them apply, then the accused cannot take shelter under this exception. First Proviso: the provocation was sought or voluntarily given by the accused as an excuse for killing or causing injury to someone. For example, if a spouse tricks or provokes the other to kill out of anger and then takes shelter under Exception 1, this would not apply.

Second Proviso: the provocation was given by anything done in obedience to law or by a public servant acting in the exercise of his public functions.

Third Proviso: the provocation was given by anything done in the exercise of the right of private defence.

4.4 Evidentiary Proof of Motive and Circumstantial Chains

Spousal killings mostly occur in the privacy of the couple's home, and there are rarely eyewitnesses to such murders. Therefore, the prosecution relies on circumstantial evidence to convict the spouse for the pre-planned or deliberate killing of the partner. The legal standards for the admissibility of circumstantial evidence were formulated under the Indian Evidence Act, 1872 (IEA) and have since been expanded under the Bharatiya Sakshya Adhiniyam, 2023 (BSA). Proof of Motive under Section 8 IEA / 6 BSA: According to Section 8 of the IEA (Section 6 of the BSA), any fact that constitutes or shows the existence of a motive or preparation for a

¹¹ Section 300, Exception 1, IPC, 1860; K.M. Nanavati V. State of Maharashtra, AIR 1962 SC 605

relevant fact is admissible. In spousal homicide cases¹², the prosecution offers relevant facts that show that the accused used to be unfaithful to his spouse or has an extra-marital affair.

The Five Golden Rules of Circumstantial Evidence¹³ as per Sharad Birdhichand Sarda v. State of Maharashtra, 1984

In the seminal case of Sharad Birdhichand Sarda v. State of Maharashtra, 1984, the Supreme Court laid down the five golden rules for cases relying on circumstantial evidence.

The five golden rules are as follows:

- Circumstances must be fully established: Every circumstance used to prove the guilt of the accused must be supported by reliable evidence.
- Facts must be consistent with guilt: The facts that have been established should point towards the guilt of the accused and not support an innocent explanation.
- Circumstances must be conclusive: The evidence must clearly indicate that the accused committed the offence, rather than merely creating suspicion.
- Alternative explanations must be ruled out: The circumstances must be strong enough to exclude other reasonable possibilities that are consistent with the innocence of the accused.
- The chain of evidence must be complete: All the circumstances taken together must form a complete chain that leaves no reasonable doubt that the accused committed the crime.

These principles ensure that a person is not convicted merely on the basis of suspicion. The prosecution must establish a complete and reliable chain of circumstances to prove guilt beyond reasonable doubt.

In cases involving electronically stored information (ESI), such evidence must also be properly authenticated and presented in accordance with the applicable provisions of the Bharatiya Sakshya Adhiniyam (BSA). Under Section 63 BSA (formerly 65B IES Act), ESI includes any chat, text, or other electronic conversation with a paramour that the prosecution can use to prove pre-conception of the crime.

4.5 Comparative Structural Evolution: IPC vs. BNS

The repeal of the IPC in favor of the BNS has changed the numbering of statutes but has retained the substantive law on culpable homicide¹⁴.

Definition of culpable homicide: Earlier defined under Section 299 IPC, the definition of culpable homicide has been carried forward to Section 100 BNS.

Definition of murder: Previously governed under Section 300 IPC, the four clauses and five exceptions to murder are now encapsulated in Section 101 BNS.

Punishment for murder: While Section 302 IPC was a standalone punishment section, the BNS consolidated the punishments for murder and culpable homicide that does not amount to murder under Section 101(1) BNS. Similarly, Section 304 IPC now maps to Section 105 BNS. Section 105 BNS retains the distinction between Part I and Part II for culpable homicide that falls under Exception 1.

Criminal Conspiracy: This offense was earlier governed under Section 120B IPC. The offense of Causing Disappearance of Evidence was governed under Section 201 IPC. However, these offenses are now covered under Sections 61 and 238 BNS, respectively. Both sections are critical in registering complaints against a spouse for pre-planned murder, staged accidents, and concealment of the victim's body.

When a person kills their intimate partner, the trial usually turns into a legal tug-of-war¹⁵. The prosecution works to prove it was Murder, while the defense tries to lower the charge to a less severe middle option: Culpable Homicide Not Amounting to Murder (CHNAM). This lesser offense is ruled by Section 304 of the old Indian Penal Code (IPC) and Section 105 of the new Bharatiya Nyaya Sanhita (BNS). To understand how the law handles this, we have to look at the overall framework and the two legal paths a case can take.

5. CONCEPTUAL FRAMEWORK AND TWO STATUTORY ROUTES

Indian Penal Code 1860 establishes CHNAM as a lesser-included offense as compared to murder, and an intimate partner homicide becomes culpable homicide of this category if the act, The Exception Route (Mitigated Murder): One of the four clauses of Section 300 IPC / Section 101 BNS (establishes intentional or deadly harm) is satisfied by the physical act, but the accused proves that the offense falls under one of the Five Statutory Exceptions. When the killing was committed out of unfaithfulness of the spouse, the most used Exception is Exception 1 (Grave and Sudden Provocation) and the charges reduced from Section 302 IPC / Section 101(1) BNS to CHNAM.

The Direct Route (Sub-murder culpability): The physical act satisfies the definition of culpable homicide given in Section 299 IPC / Section 100 BNS, but fails to reach the required degree of probability, imminent danger or specific intent as given in the four clauses of Section 300 IPC / Section 101 BNS.

¹² Trimukh Maroti Kirkan V. State of Maharashtra, (2006) 10 SCC 681

¹³ Sharad Birdhichand Sarad V. State of Maharashtra, (1984) 4 SCC 116

¹⁴ Indian Penal Code, 1860; Bhartiya Nyaya Sanhita, 2023

¹⁵ Bharatiya Nyaya Sanhita, 2023, Section 100

5.1 The Two Sections' Difference: IPC Section 304 vs. BNS Section 105

There are two tiers of punishments prescribed for CHNAM according to the nature of the mens rea:

Intentional homicide (Section 304, Part I IPC / Paragraph 1 of Section 105 BNS): This applies when the act causing death is intentionally committed, or the bodily injury sustained is likely to cause death. When the spouse commits the killing under grave and sudden provocation on the discovery of infidelity but consciously inflicts deadly blows when in a frenzy of anger, the culpability falls under Part I / Paragraph 1 and the punishment is imprisonment for life or imprisonment of either type up to ten years, besides a mandatory fine.

Knowledge-based homicide (Section 304, Part II IPC / Paragraph 2 of Section 105 BNS): When the act is done with subjective knowledge that it is likely to cause death, but with neither the intention to do so nor to cause such injury as is likely to cause death, the absence of animus necandi is the distinguishing feature. The punishment is imprisonment of either description up to ten years, or fine, or both.

The BNS Section 105 Transition

The enactment of the BNS, 2023 retains the fundamental principles governing culpable homicide not amounting to murder. The base level of culpable homicide (Section 299 of the IPC) has been renumbered as Section 100 of the BNS. Similarly, the definitions of murder and its exceptions have been moved to Section 101 of the BNS. Section 304 of the IPC is directly corresponded to Section 105 of the BNS. The division into two sections, for intentional killings and knowledge-based killings is retained. Furthermore, the offenses which result from rash or negligent acts are moved from Section 304A of the IPC to Section 106 of the BNS.

6. GUIDING PRINCIPLES FOR JUDICIAL OVERSIGHT

Since the sentencing range for CHNAM is wide (from short prison terms or fine to life imprisonment), appellate courts have set out some principles to help trial courts in passing sentences:

The Three-Stage Inquiry (State of AP v. Rayavarapu Punnayya, 1976)¹⁶: According to the guidelines set by the apex court, the first thing the trial courts have to do is to establish that the homicide was culpable according to Section 299/100, and then determine that the conditions in Section 300/101 were not satisfied. Finally, the trial courts have to assess whether any of the statutory exceptions apply in order to reduce the culpability from Section 302/101 to Section 304/105.

Distinguishing intent from knowledge (Kapur Singh v. State of Punjab, 1956 and State of MP v. Soumilal, 2003): A single fatal blow casually administered during a brawl indicates a lack of specific intent to cause death and this would place the culpability within Part II / Paragraph 2.

On the contrary, multiple blows are deliberately and ruthlessly administered with a view to causing death by using a deadly weapon, and this would necessitate a finding of culpability under Part I / Paragraph 1.

Aggravating versus mitigating factors in spousal homicides: When passing sentences in accordance with the sections 304 of the IPC and 105 of the BNS, the courts consider the aggravating and mitigating factors, like, extreme cruelty, taking unfair advantage of the vulnerable, concealment of the body, etc., as aggravating features, and genuine emotional shock at catching spouse in flagrante delicto, lack of premeditation and long-standing domestic abuse suffered by female defendants under constant provocation, etc. as mitigating factors.

When a domestic dispute ends in a killing, the perpetrator often tries to cover their tracks. This usually involves destroying evidence, using chemicals to preserve the body, or staging a crime scene to mislead investigators. In India, these actions are illegal under Section 201 of the old Indian Penal Code (IPC) and Section 238 of the new Bharatiya Nyaya Sanhita (BNS). When the crime is triggered by a partner's infidelity, how the killer acts after the crime plays a massive role in court. These cover-up attempts serve a dual purpose: they help prove the person's guilty mindset (intent) and establish their ultimate guilt.

6.1 Statutory Framework: IPC/BNS Section 201/238

Section 201 IPC / Section 238 BNS provides that:

The Legal Framework for Evidence Destruction (IPC Section 201 / BNS Section 238)¹⁷

When an individual destroys evidence or misleads police to shield an offender after a cognizable offence, they face additional criminal liability. The sentencing scale for this offence is directly tied to the gravity of the underlying crime:

1. Death Penalty Offences: Punishable by up to seven years of additional imprisonment and a fine.
2. Life Imprisonment / 10-Year Offences: Punishable by up to three years of imprisonment, or a fine.
3. Lesser Offences: Punishable by a prison term extending up to one-fourth of the maximum penalty prescribed for the principal crime.

The Rule on Cumulative Sentencing

It should be pointed out that the law allows for sentences to be served consecutively in both the case of the main offence and that of concealing it. This has been shown by the Supreme Court in the important case of Kalawati v. State of Himachal Pradesh (1953), namely that if a defendant kills their spouse and then hides or gets rid of the body in order to remove the evidence, they can be tried and punished under both provisions together (for example, for murder and for the destruction of evidence).

¹⁶ State of A.P. V. Rayavarapu Punnayya, (1976) 4 SCC 382

¹⁷ Section 201, IPC, 1860; Section 238, BNS, 2023

6.2 The ingredients of BNS Section 238 of the IPC Section 201

To secure a conviction for the offence of causing the disappearance of evidence, it is necessary to prove the following: that the principal offence was committed (as provided in Section 19 of the BNS and IPC Section 20), that the person had knowledge or belief at the time the Section 201 IPC or Section 238 BNS offence was committed that the principal offence had been committed, and that there was an intention to shield the accused from punishment. Hence, if the prosecution is unable to prove that an offence actually took place (for example, the possibility that the accused may have died by suicide or in an accident), the accused cannot be convicted even for having attempted to destroy the evidence (*Hanumant v. State of Madhya Pradesh*, 1952).

6.3 Weighing the Evidence against IPC Section 300(1) Exception, BNS Section 101

When the defendant claims that they killed their spouse as a result of grave and sudden provocation upon discovering the spouse's infidelity, the circumstantial evidence relating to the disposal of the body after death and the disposal of evidence becomes very important. According to Section 8 of the Indian Evidence Act, 1872 (IEA), as amended by Section 6 of the Bharatiya Sakshya Adhiniyam, 2023 (BSA), relevant facts are those which form the background to an offence or which are acts that take place after the commission of an offence. If the defendant is truly experiencing unpremeditated anger because of sudden provocation, they will show a state of shock or surprise. This can frequently manifest as confusion, panic, or even a readiness to hand oneself in to the police after the crime has been discovered (as seen in the case of *K.M. Nanavati v. State of Maharashtra*, 1962). The defendant would not have the necessary presence of mind to plan or carry out the disposal of the body. On the other hand, actions such as purchasing plastic drums for the chemical preservation of the body, burying the body in salt, dragging the body from the place where it died to another location, and filing false police reports are all indications of pre-planning and prior possession of the materials intended for the concealment of evidence of murder. It has been observed by the courts that planning a crime after the offence has been committed undermines the idea of suddenness and removes the element of *mens rea*¹⁸.

6.4 Modern developments: the use of chemical encapsulation and the creation of staged accidents

In instances of marital disputes and extramarital affairs, couples are often involved in criminal conspiracy (under IPC Section 120B or BNS Section 61). In such cases, the handling of the body can take two forms:

a. The chemical encapsulation of the body, also known as 'cold storage' (as observed in the Blue Drum Cases)

In recent instances in different jurisdictions, spouses and their lovers have been observed putting their spouses' bodies into plastic containers, salt, or concrete¹⁹. Evidence of having bought salt and industrial-grade plastic drums containing chemical preservatives is relevant pursuant to Section 8 of the IEA and Section 6 of the BSA.

If the police find a body hidden in a concrete slab or in a salt block located in the accused's home, the prosecution could use the presumption provided for in Section 106 of the IEA or Section 109 of the BSA to prove the accused's guilt beyond reasonable doubt. This is so because the evidence in question is something only the accused could have known about and is directly related to his actions. The accused will not be able to give any alternative explanation for the body being in his possession, and his failure to put forward a plausible explanation would present an insurmountable obstacle to proving his guilt (*Sharad Birdhichand Sarda v. State of Maharashtra*, 1984).

b. The use of the terrain for getting rid of the body and for staging the accident

In other instances the spouse is tricked into going to a mountainous area for a holiday, where the accused pushes them off the edge and then claims it was an unfortunate accident.

The prosecution could give as digital evidence, in accordance with Section 63 BSA, the search engine history of the accused relating to mountainous areas, the call detail records (CDR) of the communications between the conspirators, and a reconstruction of the crime scene showing the position of the body and the point of impact after the fall in order to demonstrate that the fall was not accidental. The evidence would be pertinent in view of the exception to Section 300 IPC or Section 101 BNS for grave and sudden provocation. Moreover, the act of portraying the fall as accidental in order to conceal the crime constitutes an offence of giving false information to the police as provided for in IPC Section 201 or Section 238 BNS. This in turn would enable the court to have a basis for evidence on which to conclude that the accused had the criminal intent to protect the offender from punishment.

7. CONCLUSION : RETHINKING JUDICIAL PARITY, SYSTEMIC BIAS, AND THE INVISIBLE MALE VICTIM

Spousal homicide is a complex legal issue in India, since both the present Indian Penal Code (IPC) and the new Bharatiya Nyaya Sanhita, 2023 (BNS) include clear criteria for murder (section 300 IPC / section 101 BNS) and for less severe forms of homicide (section 299 IPC / section 100 BNS). The judgment regarding provocation and motive in cases of spousal homicide, however, is often unreasonably influenced by systemic gender bias.

1. The Blind Spots of the Institution: Systemic Bias and Male Protection

India is frequently disparagingly described as a patriarchal and male-dominated society. Yet, in the case of domestic disputes and legislation concerning gender, the situation becomes quite different. The current Indian legal system offers a large number of safeguards for women in instances of marital disagreements and domestic violence, such as Section 498A IPC / Section 85 BNS, the presumptions regarding dowry deaths, and other appropriate personal law statutes. At the same time, there are no provisions that aim to protect men in similar circumstances. When faced with spousal conspiracy or abuse, male victims do not have any legal redressal options that are explicitly gendered or take into account their status as male victims of a female perpetrator. The idea that

¹⁸ Bharatiya Sakshya Adhiniyam, 2023

¹⁹ *Sharad Birdhichand Sara V. State of Maharashtra*, (1984) 4 SCC 166

men are aggressive: Society and the legal system have developed the belief that men are always in the role of the aggressor and are rarely the victim. This is particularly harmful in cases of marital disagreement and spousal homicide.

The wrong use of domestic laws means that men who are wrongly accused under Section 498A IPC or Section 85 BNS suffer considerable social stigma and financial losses, and the legal remedies open to them (for example, Section 211 IPC for malicious prosecution) are nearly useless because of the lack of institutional support²⁰.

2. A examination of the case: the delay in justice, the use of liberal bail conditions, and the lack of systemic action

The systemic problems that occur in cases of spousal homicide where the victim is a man can most clearly be seen when one looks at the legal precedents concerning men who have been victims of homicide in intimate partner relationships and who are regularly granted bail while the trials continue for indefinitely long periods. A Case of Inequality: The Courts' Showing of Mercy Compared to Injustice Done to the Victim. In multiple high-profile cases across the country where intimate partner homicide occurred, the female offenders were granted bail after minimal judicial custody due to a perceived 'gender bias' while the trial courts continued to take years to deliver verdicts

In a particular instance, a woman and her lover plotted to have her husband killed after he found out about their extramarital affair. Although a number of digital and forensic pieces of evidence including Call Detail Records (CDR) and cell tower data linked her to the conspiracy to commit suicide (Sections 120B IPC / Section 61 BNS) and to the destruction of relevant evidence (Section 201 IPC / Section 238 BNS), the woman was nevertheless released on bail following a short period of judicial custody. At the same time, the husband's parents are still struggling to get the trial sped up.

Lack of action: Even though there is obvious gender bias at various stages of the process, neither the police nor the trial court has addressed the false accusations made by the accused spouse and her paramour. Although there have been several cases of misdirection and false FIRs filed, law enforcement has still ignored the possibility of perjury and false counter-claims. This shows how flawed the current safeguards are which are meant to protect women in cases of spousal homicide. If the Indian legal system really did favour men as much as it says it does, the accused spouse in this case would already have been found guilty of perjury and making false allegations of domestic violence²¹.

3. Final Remark

In the end, the series of tragic events leading to the killing of a spouse shows the flaws of a legal system which is based on gendered views of domestic violence. The criminal law and justice system in India need to develop so as to secure equal treatment by the courts for both men and women in cases of homicide whether the victim is a man or a woman should have no effect on the basic respect due to human life. Although the legal system must continue to safeguard women from the effects of domestic abuse, it also has to take into account the needs of men who are victims of spousal homicide, especially in cases involving conspiracy and false accusations. As the new BNS is introduced throughout the country, the Indian judiciary has to understand that its patronising attitude towards gendered violence stands in the way of achieving full justice in cases of spousal homicide, marital conflict, and intimate partner violence. If the courts do not begin to treat men as equal participants in the domestic sphere, India's criminal law system will never be able to deliver full justice to men who are victims of spousal homicide, particularly in cases of conspiracy and false accusations.

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