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## A COMPARATIVE ANALYSIS OF THE NEW AND OLD CRIMINAL LAWS IN INDIA

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### Abstract

The Indian criminal justice system has witnessed a historical transformation with the enactment of three new legal frameworks in 2023: the Bharatiya Nyaya Sanhita (BNS), the Bharatiya Nagarik Suraksha Sanhita (BNSS), and the Bharatiya Sakshya Adhinyam (BSA), replacing the colonial-era Indian Penal Code (IPC), Code of Criminal Procedure (CrPC), and Indian Evidence Act, respectively. These reforms signify a decisive step toward decolonizing and modernizing India's legal structure to address contemporary societal issues, improve procedural efficiency, and enhance justice delivery mechanisms. This research paper explores the comparative dimensions of these laws, highlighting key changes, including the introduction of community service, digital evidence handling, and gender-neutral provisions. It critically examines the effectiveness of these innovations and evaluates the challenges posed by vague definitions, potential overlaps with existing legislation, and implementation readiness. Through a detailed comparison, the paper aims to provide a holistic understanding of the new criminal law regime, its progressive strides and the reforms that remain to ensure a robust and inclusive legal system for modern India.

Keywords- BNS, BNSS, BSA, IPC, CrPC, IEA

### 1. Introduction

India's criminal justice system has long been anchored in laws established during the British colonial era. Enacted in the 19th and early 20th centuries, statutes such as the Indian Penal Code (IPC) of 1860, the Code of Criminal Procedure (CrPC) of 1973, and the Indian Evidence Act of 1872 were designed to serve colonial administrative needs rather than the democratic aspirations of an independent nation. These laws prioritized control over reform, focusing on public order, crime suppression, and colonial interests. In the post-independence era, however, India's legal system increasingly required a paradigm shift to reflect evolving constitutional values, societal dynamics, and technological advancements.

Critics have long pointed out that these colonial-era laws suffer from a lack of inclusivity, outdated terminology, gender biases, and inefficiency in dealing with emerging crimes such as cybercrime, financial fraud, terrorism, and organized crime. Furthermore, their complex procedural framework and rigid evidentiary requirements often result in significant delays in the delivery of justice, undermining public trust in the legal system.

Recognizing the urgent need for reform, the Indian government has responded with a bold legislative initiative in the form of three new criminal law codes: the Bharatiya Nyaya Sanhita (BNS), the Bharatiya Nagarik Suraksha Sanhita (BNSS), and the Bharatiya Sakshya Adhinyam (BSA).

In response to these concerns, the Indian government enacted three new laws in December 2023—the Bharatiya Nyaya Sanhita (BNS), BharatiyaNagarik Suraksha Sanhita (BNSS), and BharatiyaSakshyaAdhiniyam (BSA)—which are set to replace the IPC, CrPC, and Evidence Act respectively, with effect from July 1, 2024. These legislations aim to bring about a holistic transformation of the justice system by simplifying language, consolidating provisions, and incorporating technology-enabled procedures.

Moreover, these reforms aim to balance individual rights with the interests of state security, marking a significant evolution in India's approach to criminal jurisprudence. As legal scholars and practitioners assess the impact of these reforms, this comparative analysis becomes crucial in identifying their potential strengths and shortcomings. This research paper undertakes a comprehensive comparison of the new and old criminal laws, analyzing structural, substantive, procedural, and evidentiary changes, while critically evaluating their effectiveness and readiness for implementation in the Indian legal ecosystem.

## 2. Substantive Law Reforms: IPC vs. BNS

The transition from the Indian Penal Code, 1860 to the Bharatiya Nyaya Sanhita, 2023 marks one of the most significant shifts in India's criminal law landscape. The IPC, a colonial-era statute drafted under British rule, reflected the priorities of imperial governance—emphasizing state authority, public order, and retributive justice. While it served as the backbone of Indian criminal law for over 160 years, its framework increasingly appeared outdated, failing to address the evolving dynamics of crime and the aspirations of a post-independence constitutional democracy.

The Bharatiya Nyaya Sanhita (BNS) was enacted to remove the colonial hangover and introduce a criminal justice framework that is citizen-centric, responsive, and aligned with constitutional values. One of the defining features of the BNS is its shift from offender-

centric to victim-centric justice. The new provisions emphasize the protection of victims' rights, enhance sentencing guidelines, and incorporate new categories of crime such as mob lynching, hate crimes, and crimes against women and children in digital spaces.

### 2.1 Structural Reorganization and Legal Definitions

The Bharatiya Nyaya Sanhita (BNS), 2023, undertakes a comprehensive restructuring of India's criminal law by refining and simplifying the legal framework established under the Indian Penal Code (IPC), 1860. This structural overhaul not only reduces the volume of the statute but also reorders its contents for greater thematic clarity and user accessibility.

#### 2.1.1 Reduction and Consolidation of Sections

The IPC contained 511 sections, many of which were outdated, repetitive, or inconsistent with modern legal standards. The BNS reduces this number to 358 sections by:

- Merging related offences (e.g., various forms of theft and extortion are now consolidated).
- Eliminating archaic provisions (such as colonial-era punishments and moral policing clauses).
- Streamlining offence categories, such as grouping all offences against women and children into a cohesive segment.

This restructuring facilitates easier interpretation and more efficient judicial application. It also aligns the law more closely with international legislative drafting practices.

#### 2.1.2 Unified Definition Section (Section 2)

A notable feature of the BNS is the creation of a consolidated definitions clause under **Section 2**, in contrast to the IPC, where definitions were dispersed. This structural improvement ensures clarity and removes ambiguity by providing consistent interpretations across the code.

Updated definitions now include:

- **"Child"**: Harmonized with other child protection laws like the POCSO Act.
- **"Court"**: Now includes virtual and online courts, reflecting post-pandemic digitization.
- **"Transgender"**: Recognizes gender diversity in line with *NALSA v. Union of India*, (2014) 5 SCC 438.

These definitions improve inclusivity and legal relevance in a rapidly evolving social and technological context.

### 2.1.3 Thematic Grouping of Offences

The BNS arranges offences in a more logical, thematic format. For instance:

- Offences against the human body are grouped together.
- New chapters are dedicated to organized crime, terrorism, and cyber offences.
- Crimes against women and children are emphasized and prioritized.

This approach aids in the targeted application of legal provisions and enhances coherence in judicial decisions.

### 2.1.4 Elimination of Redundant and Unconstitutional Provisions

Provisions such as Section 377 (criminalizing consensual homosexual acts) have been omitted, following the Supreme Court's landmark ruling in *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1<sup>1314</sup>. Similarly, morality-based offences like adultery (Section 497 IPC), struck down in *Joseph Shine v. Union of India*, (2019) 3 SCC 39<sup>1315</sup>, have been excluded.

This reflects a constitutional shift in criminal law—towards the protection of individual dignity, autonomy, and privacy. It also underscores the BNS's responsiveness to constitutional jurisprudence and its willingness to adapt to progressive legal interpretations.

Together, these structural reforms mark a foundational shift in India's approach to substantive criminal law, prioritizing clarity, inclusivity, and legal modernization.

## 2.2 Key Innovations and New Offences

The Bharatiya Nyaya Sanhita introduces several novel provisions that reflect the shifting nature of crime and society in contemporary India. These innovations fill legal gaps that had been inadequately addressed under the Indian Penal Code, aligning criminal law with democratic values, technological evolution, and constitutional morality.

### 2.2.1 Introduction of Community Service (Section 23)

For the first time in Indian penal history, the BNS incorporates **community service** as a form of punishment for minor and non-violent offences. This non-custodial sentence is intended to reduce overcrowding in prisons and foster offender rehabilitation through constructive engagement with society.

### 2.2.2 Criminalization of Mob Lynching (Section 103(2))

The BNS formally recognizes **mob lynching** as a distinct criminal offence. Section 103(2) criminalizes acts of violence committed by groups against individuals based on their caste, religion, race, sex, or language. This legislative move is a direct response to the increasing number of hate crimes and vigilante violence incidents, particularly those sparked by misinformation or communal bias.

### 2.2.3 Reframing of Sedition Laws (Section 152)

The controversial sedition provision of the IPC, Section 124A, has been **replaced** by Section 152 of the BNS, titled "acts endangering sovereignty, unity, and integrity of India." This reframing narrows the scope of criminal liability, focusing on incitement to secession, rebellion, or subversive activity. While this appears to be a progressive shift, concerns persist regarding potential misuse given the broad interpretive language. The jurisprudential legacy from

<sup>1314</sup> *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1.

<sup>1315</sup> Footnote: *Joseph Shine v. Union of India*, (2019) 3 SCC 39.

*KedarNath Singh v. State of Bihar*, AIR 1962 SC 955<sup>1316</sup>, which upheld sedition under certain limits, remains relevant in evaluating this new provision's impact.

#### 2.2.4 Legal Recognition of Transgender Individuals

The BNS includes a more **inclusive definition** of gender by recognizing “transgender” persons, as inspired by *NALSA v. Union of India*, (2014) 5 SCC 438. However, there are still gaps in application—particularly in sexual offences, where rape remains a gender-specific crime defined only against women. This binary approach excludes male and transgender victims from full legal protection under such provisions.

#### 2.2.5 Codification of New and Evolving Crimes

The BNS codifies several **emerging offences** that were either addressed ambiguously or through separate special laws under the IPC. These include:

- **Snatching:** Now classified as a separate offence, distinct from theft and robbery.
- **Organized Crime and Terrorism:** While previously covered by laws like MCOCA and UAPA, the BNS incorporates specific provisions to address such offences comprehensively.
- **Terrorist Acts and Financing:** Provisions dealing with aiding, abetting, or financing acts of terrorism are now clearly codified, ensuring better prosecutorial outcomes and alignment with national security laws.

These provisions aim to offer legal clarity, operational consistency, and enhanced deterrence.

### 2.3 Sentencing Reforms and Penal Philosophy

The Bharatiya Nyaya Sanhita (BNS), 2023, introduces a more coherent and progressive penal philosophy, focusing on deterrence, rehabilitation, proportionality, and

accountability. These changes aim to harmonize sentencing structures with constitutional values and contemporary understandings of criminal behaviour.

#### 2.3.1 Enhanced Punishments for Heinous Offences

Under the BNS, offences such as rape, gang rape, murder with aggravating circumstances, and grievous hurt resulting in permanent disability attract significantly **higher minimum and maximum punishments**. For instance, rape that renders the victim in a vegetative state must now result in a **minimum sentence of 20 years**, which may extend to life imprisonment (Section 63 BNS). This aligns with judicial reasoning in *Shimbu v. State of Haryana*, (2014) 13 SCC 318<sup>1317</sup>, where the Court upheld the principle that lenient sentences for heinous crimes undermine public trust in the legal system.

#### 2.3.2 Mandatory Minimum Sentences

The BNS mandates **minimum sentencing guidelines** for a range of offences, particularly those involving public trust violations. For example, offences like **criminal breach of trust by public servants**, misappropriation of government funds, or custodial torture must carry a minimum term of imprisonment. This change is designed to prevent judicial inconsistency and ensure that serious offences are penalized uniformly.

#### 2.3.3 Special Provisions for Repeat Offenders

Repeat offenders now face **enhanced penalties** under BNS, particularly in cases involving sexual crimes, terrorism, or organized crime. These provisions are aimed at reducing recidivism and conveying the law's intolerance for habitual offending. Aggravated forms of punishment—including extended imprisonment and exclusion from plea bargaining—may be imposed based on prior convictions (Section 112 BNS).

#### 2.3.4 Community Service and Restorative Sentencing

<sup>1316</sup> *Kedar Nath Singh v. State of Bihar*, AIR 1962 SC 955.

<sup>1317</sup> *Shimbu v. State of Haryana*, (2014) 13 SCC 318.

For the first time, **community service** is formally introduced as a sentencing option under Section 23 of the BNS. Designed for non-violent, minor offences, this alternative punishment reflects a shift toward **restorative justice**—emphasizing the rehabilitation of offenders, reintegration into society, and reparation to the

community. Although operational guidelines are awaited, this reflects the Indian justice system’s alignment with international norms such as those promoted by the United Nations Office on Drugs and Crime (UNODC).

**Comparative Table: IPC vs. BNS (Substantive Reforms)**

Aspect	Indian Penal Code (IPC), 1860	Bharatiya Nyaya Sanhita (BNS), 2023
<b>Total Sections</b>	511	358
<b>Legal Definitions</b>	Spread across multiple sections	Unified under Section 2, including digital terms, child, transgender
<b>Gender Recognition</b>	No mention of transgender persons	Explicit recognition of transgender persons
<b>Sedition</b>	Section 124A (broadly worded, colonial origin)	Replaced by Section 152 – focuses on acts endangering sovereignty and unity
<b>Mob Lynching</b>	No specific provision	Section 103(2) – specifically criminalizes mob lynching
<b>Community Service</b>	Not recognized	Introduced as a punishment under Section 23
<b>Sexual Offences</b>	Gender-specific (against women only)	Retains gender-specific approach, excludes transgender and male victims
<b>Organized Crime and Terrorism</b>	Dealt with under separate legislations (UAPA, MCOCA)	Substantively included with clear definitions and punishments
<b>Unconstitutional/Struck Down Provisions</b>	Retained outdated provisions (e.g., Section 377, Section 497)	Omitted provisions struck down by judiciary (e.g., homosexuality, adultery)
<b>Sentencing Structure</b>	Inconsistent, left to wide judicial discretion	Graded and proportionate sentencing introduced
<b>Minimum Sentencing Guidelines</b>	Absent or limited	Clearly defined, especially for public trust and violent offences
<b>Repeat Offender Penalties</b>	Not systematically addressed	Enhanced penalties for repeat offenders under Section 112
<b>Restorative Justice Tools</b>	Not present	Community service, rehabilitative sentencing introduced

### Judgements Cited

- *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1.
- *Independent Thought v. Union of India*, (2017) 10 SCC 800.
- *Shimbu v. State of Haryana*, (2014) 13 SCC 318.
- *KedarNath Singh v. State of Bihar*, AIR 1962 SC 955.

### 3. Procedural Reforms: CrPC vs. BNSS

The procedural transformation from the Code of Criminal Procedure, 1973 (CrPC) to the BharatiyaNagarik Suraksha Sanhita, 2023 (BNSS) represents a significant modernization in the administration of criminal justice. With 533 sections replacing the CrPC's 484, the BNSS seeks to streamline investigation, arrest, bail, trial, and sentencing procedures with greater emphasis on transparency, victim rights, digital integration, and time-bound action. These updates reflect both jurisprudential and administrative advances and aim to bring greater efficiency and fairness to the legal process.

#### 3.1 Strengthening Investigations Through Forensic Support

India's criminal investigations have long been criticized for overreliance on confessions, eyewitness accounts, and custodial interrogation—methods that are vulnerable to human error, bias, and even coercion.

The lack of emphasis on forensic analysis, such as DNA testing, fingerprint examination, digital data retrieval, and crime scene reconstruction, has significantly undermined the quality and credibility of investigations. Recognizing these persistent shortcomings, the BNSS marks a deliberate and strategic shift toward the adoption of modern forensic standards.

By placing forensic labs, digital tools, and expert interpretation at the heart of crime detection and prosecution, the BNSS fosters a legal

environment that values accuracy, transparency, and accountability. This forward-looking approach helps restore public faith in the justice system and aligns India with international norms of best practices in criminal investigations.

#### 3.1.1 Mandating Forensic Presence at Crime Scenes

Section 176(3) mandates the compulsory involvement of forensic experts at crime scenes for offences punishable with imprisonment of seven years or more. This provision marks a pivotal shift from traditional investigation methods to a more evidence-based approach grounded in scientific analysis. It also minimizes the chances of evidence tampering or contamination, which is particularly crucial in complex criminal cases involving homicide, sexual offences, and financial fraud. The Supreme Court in *Selvi v. State of Karnataka*, (2010) 7 SCC 263<sup>1318</sup>, had already emphasized the need for an evidence-based investigation framework and cautioned against overdependence on confessions, which can often be influenced by coercion or manipulation. The integration of forensic science into mainstream investigative procedures under the BNSS reflects a broader commitment to strengthening the credibility, accuracy, and fairness of criminal trials.

#### 3.1.2 Expansion of Medical Examination Powers

BNSS broadens the authority for medical examinations under Sections 51 to 53 and 184, allowing any police officer—not just officers of a specified rank—to initiate such procedures. This expansion is particularly impactful in cases involving sexual violence, child abuse, and custodial torture, where time is often of the essence. The procedural reform ensures that evidence collection is not delayed due to the unavailability of senior officers, thereby closing a significant loophole in the older framework. Furthermore, it aligns with the victim-sensitive

<sup>1318</sup> *Selvi v. State of Karnataka*, (2010) 7 SCC 263.

approach endorsed by the judiciary in *Lillu @ Rajesh v. State of Haryana*, (2013) 14 SCC 643<sup>1319</sup>, where the Court emphasized the need for medical procedures that are timely, dignified, and free from bias or delay. The BNSS thus strengthens the legal infrastructure by ensuring more inclusive and responsive law enforcement at the grassroots level.

### 3.1.3 Use of Video Conferencing for Witnesses

Section 193 allows for witness examination via video conferencing, significantly contributing to the modernization of courtroom procedures. This method of examination helps reduce trial delays that often result from witness unavailability, travel issues, or logistical constraints. It proves particularly valuable in cases involving vulnerable witnesses—such as survivors of sexual assault, children, or elderly individuals—who may find physical court appearances traumatic or unsafe. Furthermore, for cases involving witnesses residing in distant or international locations, video conferencing facilitates real-time testimony without the need for costly and time-consuming travel.

## 3.2 Introduction of Zero FIR

Section 173 introduces Zero FIR, which permits victims to lodge an FIR at any police station, regardless of territorial jurisdiction. The concept of Zero FIR is designed to reduce procedural delays, initiate swift police action, and ensure that the registration of crime is not hindered by bureaucratic constraints. Once registered, the FIR can be transferred to the appropriate police station for investigation. This approach not only enhances victim access to justice but also reflects a more responsive and citizen-friendly policing framework.

### 3.2.1 Digital FIR and Record Maintenance

Section 173(1) supports the filing and storage of FIRs electronically, enabling better data management, traceability, and accessibility for all parties, including courts and investigators. This digital approach reduces reliance on

paper-based records, minimizes the risk of manipulation or loss of documents, and facilitates faster communication between investigative agencies and judicial authorities.

### 3.2.2 Right to a Copy of the FIR

Under Section 173(2), victims are entitled to receive a free copy of the FIR without any procedural hurdles or financial burden. Providing access to the FIR allows victims to understand the charges filed, monitor investigative progress, and seek timely legal recourse. The Supreme Court recognized the importance of this right in *Youth Bar Association of India v. Union of India*, (2016) 9 SCC 473, emphasizing that denying such access undermines fairness and hampers the right to be heard. By codifying this entitlement in the BNSS, the law reinforces a system where victims are empowered, not sidelined, in the judicial process.

## 3.3 Ensuring Timeliness and Empowering Victims

The BNSS introduces strict timelines to combat the endemic issue of judicial delays while enhancing victims' roles in proceedings, thereby aligning India's criminal justice system more closely with the constitutional mandate of speedy justice under Article 21. Chronic delays in investigation, charge-framing, and judgment delivery have long plagued the Indian legal system, often resulting in prolonged pre-trial detention and erosion of public faith in the process. By incorporating structured deadlines at each stage of the trial—from the submission of charge sheets to the pronouncement of judgments—the BNSS seeks to transform a historically sluggish system into one marked by efficiency and predictability.

### 3.3.1 Time-Bound Procedures and Accountability

BNSS mandates specific deadlines for the delivery of charge sheets, framing of charges, and pronouncement of judgments:

- Charge sheet and documents to be provided within 14 days (Section 230)

<sup>1319</sup> *Lillu @ Rajesh v. State of Haryana*, (2013) 14 SCC 643.

- Discharge application within 60 days (Section 250)
- Charges framed within 60 days (Sections 251 and 263)
- Judgments delivered within 30 days, extendable by another 30 days (Section 258)

These provisions are aligned with the principle of speedy trial emphasized in *Hussainara Khatoon v. State of Bihar*, (1979) AIR 1369<sup>1320</sup>.

### 3.3.2 Victim Participation and Rights

Sections 193(4) and 193(5) ensure that victims are no longer passive observers but active participants in the criminal justice process. These provisions allow victims to attend hearings and present their concerns through digital platforms, **thereby overcoming logistical and psychological barriers that often hinder in-person appearances. This legal acknowledgment marks a significant shift toward a more victim-centric justice framework that prioritizes access, dignity, and emotional safety. By offering procedural rights and participatory opportunities at critical junctures—such as bail hearings, plea negotiations, or sentencing—**BNSS aligns itself with international human rights instruments like the UN's 1985 Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. The aim is not only to provide a voice to victims but also to integrate their perspectives into decisions that impact their lives directly, thus moving toward a more holistic and inclusive model of justice.

### 3.4 Expanding Authority: Cross-Border Enforcement and Crime Proceeds

In recognition of the increasingly transnational, organized, and technologically sophisticated nature of modern crime, the BNSS significantly broadens procedural jurisdiction to empower law enforcement and judicial authorities. Contemporary offences—ranging from cybercrime, human trafficking, money

laundering, and financial fraud to terrorism—often span across state and even national boundaries. Traditional procedural frameworks limited to local jurisdictions are no longer adequate to effectively investigate or prosecute such crimes.

#### 3.4.1 Cross-Jurisdictional Property Attachment

Section 86 empowers superintendents of police to initiate property attachment in different jurisdictions, thereby enhancing cross-border legal cooperation and enforcement efficiency. Under this provision, police officers are not restricted by territorial limitations and can directly act to secure properties that are potentially linked to criminal activity, even if they fall outside their primary area of jurisdiction. This facilitates the seamless execution of court orders and investigative processes across state lines and contributes significantly to the timely freezing or seizure of assets.

#### 3.4.2 Pre-Trial Forfeiture of Criminal Proceeds

Section 107 allows for the attachment and forfeiture of assets derived from criminal activities even prior to a formal conviction. This represents a significant procedural innovation aimed at curbing the financial influence of criminal enterprises, particularly in cases involving organized crime, drug trafficking, human trafficking, economic offences, and terrorism. Pre-trial forfeiture mechanisms enable authorities to act swiftly to prevent the dissipation or laundering of illicit assets, which are often moved rapidly across jurisdictions. The provision mirrors global best practices, as seen in the USA PATRIOT Act and the UK's Proceeds of Crime Act, both of which allow for asset seizure to interrupt the financial ecosystems that sustain criminal networks. In the Indian context, this proactive approach bolsters existing legislation like the Prevention of Money Laundering Act (PMLA) by embedding financial deterrence directly into procedural law.

<sup>1320</sup> *Hussainara Khatoon v. State of Bihar*, AIR 1979 SC 1369.

**3.4.3 Digital Service of Summons and Legal Documents**

Section 90 facilitates the electronic service of all legal documents, including summons, warrants, notices, and court orders. By eliminating delays associated with manual dispatch and physical delivery, the provision enhances procedural efficiency and accountability. Furthermore, electronic service reduces the likelihood of tampering or misplacement, ensures audit trails for verification, and aligns India's legal system with global standards of e-governance and digital documentation. It also benefits under-trial prisoners and witnesses in remote locations by accelerating timelines and reducing dependency on in-person delivery.

**3.4.4 Institutionalizing Plea Bargaining**

Section 269 of the BNSS introduces a comprehensive and structured framework for plea bargaining, which allows the accused to voluntarily plead guilty to a lesser offence in exchange for a reduced sentence. This innovation is particularly significant in the context of India's overburdened criminal justice system, where pendency of cases continues to delay justice. Plea bargaining, already prevalent in jurisdictions like the United States and Germany, serves as a mechanism to expedite trials, reduce incarceration costs, and offer closure to victims.

Under the BNSS, plea bargaining is not merely a prosecutorial negotiation—it is subject to judicial scrutiny to ensure that the accused's consent is voluntary, informed, and free from coercion. This judicial oversight is crucial to maintaining the integrity of the justice system, especially for vulnerable or underrepresented accused. The court must examine the accused, ensure that the plea is not obtained under duress, and verify that the agreement aligns with the interests of justice.

**Comparative Table: CrPC vs. BNSS**

Aspect	CrPC (1973)	BNSS (2023)
<b>Total</b>	484	533

Sections		
<b>Forensic Involvement</b>	Not mandatory	Mandatory forensic presence for crimes punishable by 7+ years (Section 176(3))
<b>Medical Examination Authority</b>	Limited to certain officer ranks	Any police officer can request medical examination (Section 184)
<b>Use of Technology</b>	Video testimony not uniformly codified	Video conferencing for witness examination authorized (Section 193)
<b>FIR Registration</b>	Must be filed in appropriate jurisdiction	Zero FIR allowed anywhere regardless of jurisdiction (Section 173)
<b>E-FIR and Digital Records</b>	Not formally incorporated	E-FIR, digital submission of complaints allowed; electronic maintenance of records (Section 173(1))
<b>Victim Copy of FIR</b>	Not guaranteed	Victim has right to a free copy of

		FIR (Section 173(2))
<b>Timeline for Charge Sheet</b>	No fixed timeline	Must be provided within 14 days (Section 230)
<b>Framing of Charges</b>	No specific timeline	Within 60 days of committal (Sections 251 and 263)
<b>Judgment Timeline</b>	No strict provision	Judgment within 30 days of conclusion of arguments (Section 258)
<b>Victim Participation</b>	Limited provisions	Active participation through electronic means allowed (Sections 193(4) & 193(5))
<b>Property Attachment</b>	Typically post-conviction	Pre-trial attachment and cross-border enforcement (Sections 86 & 107)
<b>Plea Bargaining</b>	Limited applicability	Formally incorporated to expedite trials (Section

		269)
<b>Digital Summons</b>	Not covered	Electronic service of summons allowed (Section 90)

In conclusion, the BharatiyaNagarik Suraksha Sanhita (BNSS) represents a paradigm shift in procedural criminal law, addressing the long-standing deficiencies of the CrPC while integrating contemporary advancements. By introducing mandatory timelines for key procedural stages, incorporating forensic and technological tools, formalizing victim rights, and enabling cross-jurisdictional enforcement, the BNSS lays the groundwork for a more responsive and efficient justice system. Its provisions not only enhance investigative accuracy but also foster transparency and accessibility through digital innovations like e-FIRs and electronic summons.

**Judgements Cited**

- *Selvi v. State of Karnataka*, (2010) 7 SCC 263.
- *Hussainara Khatoon v. State of Bihar*, (1979) AIR 1369.
- *Lillu @ Rajesh v. State of Haryana*, (2013) 14 SCC 643.
- *Youth Bar Association of India v. Union of India*, (2016) 9 SCC 473.

**4. Evidentiary Reforms: Indian Evidence Act vs. BSA**

The Indian Evidence Act, 1872, formed the backbone of evidentiary law in India for over a century, offering a structured legal regime for admissibility, relevancy, and proof of facts in both civil and criminal proceedings. However, with the exponential rise in cybercrime, digital commerce, and technological dependence in public life, the need to update this foundational statute became increasingly urgent. The Bharatiya Sakshya Adhiniyam (BSA), 2023, is a forward-thinking legal framework that not only

updates key provisions of the Indian Evidence Act but also introduces innovations that address challenges posed by the digital era.

#### 4.1 Admissibility of Electronic and Digital Evidence

The BSA, 2023, provides a comprehensive and progressive framework for dealing with digital and electronic evidence. This is critical in an era where most criminal and civil disputes involve some form of electronically stored information—be it emails, mobile communications, social media interactions, surveillance footage, or financial records. Unlike the Indian Evidence Act, which was limited in scope and often required judicial reinterpretation to accommodate technological advancements, the BSA explicitly acknowledges and codifies the principles governing electronic evidence, thereby enhancing legal certainty and operational efficiency.

##### 4.1.1 Expanded Definition of Document

The term "document" has been significantly broadened under Section 2(1)(d) of the BSA. It now includes any information recorded or stored electronically, such as emails, mobile messages, databases, cloud-based records, encrypted communications, blockchain-stored data, and GPS tracking logs. This shift reflects a critical understanding of modern data sources and acknowledges the digital footprint that individuals and institutions leave in almost every activity.

##### 4.1.2 Compliance with Anvar P.V. Guidelines

Sections 61 and 63 of the BSA codify the evidentiary standards laid out in *Anvar P.V. v. P.K. Basheer* (2014) 10 SCC 473. The Supreme Court in *Anvar's* case clarified that electronic records are only admissible if accompanied by a valid certificate under Section 65B of the Indian Evidence Act, verifying the authenticity and source of the electronic device from which the record was generated.

The BSA now mandates such certification as a statutory requirement, thereby eliminating ambiguity and varying interpretations across

different courts. It ensures that digital evidence is not only considered admissible but is also reliable and verifiable through predefined procedural safeguards.

##### 4.1.3 Verification Through Digital Forensics

Section 62 of the BSA introduces mandatory forensic standards for validating electronic records. It specifies mechanisms such as hash function validation (e.g., SHA-256), timestamp verification, metadata logs, and expert certification from accredited digital forensic laboratories. These practices form the bedrock of modern digital forensics and are globally recognized as the gold standard for data authenticity.

#### 4.2 Use of Audio-Visual and Scientific Evidence

As crimes increasingly occur in public spaces or are recorded via digital tools, audio-visual materials and scientific evidence have become central to the justice delivery system. The *Bharatiya Sakshya Adhiniyam* (BSA), 2023, incorporates explicit provisions for accepting such forms of evidence, thereby codifying what has often been accepted in principle by Indian courts. This shift ensures that courts do not rely solely on human testimony but have access to credible, scientifically-backed evidence to determine guilt or innocence.

##### 4.2.1 Audio-Visual Evidence in Courtrooms

Section 64 of the BSA affirms the admissibility of audio-visual recordings, including CCTV footage, drone captures, police body-worn cameras, and recordings of virtual communications (e.g., Zoom calls or teleconferencing). Such visual recordings are essential in capturing events as they occur, particularly in cases of riots, custodial interrogations, or highway incidents. The provision mandates that these recordings must be authenticated using digital certificates from certified forensic labs, ensuring their reliability and legal standing.

#### 4.2.2 Reinforcement from Judicial Precedents

The Supreme Court's decision in *Tomaso Bruno v. State of Uttar Pradesh*, (2015) 7 SCC 178<sup>1321</sup>, set a significant precedent by recognizing the evidentiary value of scientific and technological inputs over oral testimony. In that case, the Court observed that failure to produce CCTV footage despite its availability weakened the prosecution's argument, thus establishing a benchmark for the expected use of technology in criminal trials.

The BSA gives legislative backing to this jurisprudence by clearly identifying how and when such evidence can be introduced, evaluated, and challenged. It thus standardizes admissibility criteria and ensures nationwide consistency in handling audio-visual inputs.

#### 4.2.3 Witness Protection and Sensitive Testimonies

Section 128 of the BSA introduces comprehensive safeguards to protect vulnerable witnesses, particularly victims of sexual offences and juveniles. The law mandates in-camera proceedings in such cases, thereby shielding victims from public scrutiny and media attention, which can lead to secondary victimization.

This approach is in harmony with the directions given in *State of Karnataka v. Shivanna*, (2014) 8 SCC 913<sup>1322</sup>, where the Court emphasized the urgent need for witness-sensitive procedures and timelines in sexual assault cases. The BSA makes these suggestions binding statutory obligations, marking a critical advancement in aligning legal process with trauma-informed justice.

### 4.3 Presumptions and Digital Signatures

With the increased digitization of records and communications, the need to establish trust in the authenticity of electronic evidence has become paramount. The Bharatiya Sakshya Adhiniyam (BSA), 2023,

addresses this through provisions that allow courts to make presumptions regarding the genuineness of secure digital records and signatures, thereby streamlining legal processes.

#### 4.3.1 Legal Presumptions in Favor of Secure Records

Section 85 of the BSA introduces a statutory presumption in favor of the authenticity of secure electronic records and electronic signatures. These are defined as records and signatures that are generated using secure processes and tools, often supported by cryptographic protocols. Unless proven otherwise, courts are directed to presume such documents to be genuine.

#### 4.3.2 Public Authority Records

Section 90 extends this presumption to records issued or maintained by public authorities in electronic form. These may include Aadhaar-based identification records, e-governance certificates, digital land records, income tax returns, and e-notices served through government portals. Courts are empowered to accept these records as authentic unless rebutted with substantive contrary evidence.

#### 4.3.3 Global Standards and Practical Impact

The presumptions outlined in Sections 85 and 90 are in harmony with international best practices. For instance, the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Electronic Commerce encourages recognition of digital documents and signatures where backed by reliable systems. Similarly, India's Information Technology Act, 2000, offers comparable presumptions, now made more robust and court-friendly under the BSA.

### 4.4 Integration with Procedural and Technological Ecosystems

#### 4.4.1 Synergy with BNSS and BNS

The BSA does not function in isolation but forms a vital component of a larger criminal justice ecosystem that includes the Bharatiya Nagarik

<sup>1321</sup> *Tomaso Bruno v. State of Uttar Pradesh*, (2015) 7 SCC 178.

<sup>1322</sup> *State of Karnataka v. Shivanna*, (2014) 8 SCC 913.

Suraksha Sanhita (BNSS) and the Bharatiya Nyaya Sanhita (BNS). This systemic integration ensures that evidentiary standards are in step with the redefined procedural and substantive dimensions of law.

One key example of this synergy is Section 173 of the BNSS, which authorizes the filing of e-FIRs, digital charge sheets, and the electronic submission of witness statements. These digital records must comply with the authentication standards specified in the BSA, particularly those outlined in Sections 61 to 63. As a result, every procedural step involving digital documentation is now inherently linked to the evidentiary benchmarks laid down in the BSA.

**4.4.2 Reinforcing Procedural Efficiency**

Moreover, procedural mechanisms like the digital examination of witnesses under Section 193 BNSS and time-bound delivery of case-related materials (Sections 230 and 250 BNSS) are streamlined by the digital admissibility rules of the BSA. This interplay reduces ambiguity, prevents duplicity, and enhances transparency in the trial process.

**4.4.3 Alignment with Digital Governance**

The integration also aligns with broader governmental efforts under the Digital India initiative, promoting paperless governance and judicial efficiency. Platforms like eCourts, virtual hearings, and e-Summons gain further legitimacy when backed by harmonized procedural and evidentiary statutes.

**4.4.4 Toward a Unified Justice Ecosystem**

Together, these interlocking reforms ensure that the criminal justice system operates with agility and clarity in an increasingly digitized world, making the BSA not just a reformative statute but a linchpin of legal modernization in India.

**Comparative Summary: Indian Evidence Act vs. Bharatiya Sakshya Adhiniyam**

Key Aspect	Indian Evidence Act, 1872	Bharatiya Sakshya Adhiniyam,

		2023
Scope of 'Document'	Limited to physical and traditional forms	Includes electronic records, cloud data, blockchain logs, and GPS data
Admissibility of Digital Evidence	Subject to judicial interpretation under Section 65B	Codified under Sections 61–63, with mandatory certification
Use of Forensics	Not explicitly mandatory	Mandatory forensic authentication (Section 62)
Audio-Visual Evidence	Accepted by court discretion	Legislatively recognized under Section 64 with certification norms
Victim and Witness Protection	General provisions with limited scope	Detailed provisions under Section 128 for digital masking and video shielding
Legal Presumptions for Digital Records	Not comprehensively addressed	Clear presumptions under Sections 85 and 90 for secure electronic documents

Public Authority Records	No special treatment	Presumed authentic if issued electronically by a public body (Section 90)
Integration with Procedural Codes	Independent interpretation required	Directly integrated with BNSS and BNS processes (e.g., e-FIR, digital charge sheet)
Judicial Precedents as Guiding Tools	Critical to adapting law to digital age	Incorporated and codified (e.g., <i>Anvar P.V.</i> , <i>Tomaso Bruno</i> )

The Bharatiya Sakshya Adhiniyam, 2023, represents a decisive leap into the 21st century for India’s evidentiary jurisprudence. By merging technological reliability with judicial accountability, it lays down a clear, robust, and contemporary framework for evaluating and presenting evidence in court. Anchored in both legislative foresight and judicial precedent, the BSA ensures that the justice system remains fair, reliable, and responsive to the digital age.

**Judgements Cited**

- *Anvar P.V. v. P.K. Basheer*, (2014) 10 SCC 473.
- *Tomaso Bruno v. State of Uttar Pradesh*, (2015) 7 SCC 178.
- *State of Karnataka v. Shivanna*, (2014) 8 SCC 913.

**5. Critical Observations and Challenges**

*5.1 Progressive Shifts and Positive Developments*

The enactment of the Bharatiya Nyaya Sanhita (BNS), BharatiyaNagarik Suraksha Sanhita

(BNSS), and BharatiyaSakshyaAdhiniyam (BSA) signifies a monumental legal shift aimed at decolonizing India's criminal justice system. These legislations reflect a conscious move towards a more inclusive, victim-sensitive, and technologically progressive justice architecture. Key developments include the introduction of digital-first procedures such as e-FIRs, audio-video recordings of trials, and legally admissible electronic evidence—features that were either absent or inadequately addressed under the previous codes.

*5.2 Implementation Bottlenecks*

While the legislative framework is robust, **implementation** remains a major obstacle. Many law enforcement agencies and subordinate courts are under-equipped to handle the procedural and technological requirements of the new laws. The successful rollout of digital FIRs, forensic involvement in all serious crimes, and secure electronic documentation demands extensive training, upgraded infrastructure, and resource allocation.

*5.3 Vagueness and Overlap*

Certain provisions of the new codes, particularly those dealing with **national security and organized crime**, are criticized for being overly broad and imprecise. Section 152 of the BNS, which replaces the colonial-era sedition law under Section 124A IPC, uses phrases such as “acts endangering sovereignty,” which lack clear legal definition. The constitutional validity of such provisions has long been debated, with precedents like *KedarNath Singh v. State of Bihar*, AIR 1962 SC 955, delineating the boundaries of acceptable legal interpretation under sedition laws.

Moreover, the Supreme Court’s ruling in *Shreya Singhal v. Union of India*, (2015) 5 SCC 1<sup>1323</sup>, which struck down Section 66A of the IT Act for being vague and prone to misuse, reinforces the need for precision in legislative drafting. Similar clarity is essential in sections involving terrorism,

<sup>1323</sup> *Shreya Singhal v. Union of India*, (2015) 5 SCC 1

financing of crime, or acts against state sovereignty.

Additionally, overlaps between the general criminal law and specialized statutes like the Unlawful Activities Prevention Act (UAPA), Prevention of Money Laundering Act (PMLA), and Narcotic Drugs and Psychotropic Substances Act (NDPS) create jurisdictional ambiguities. Clear legislative guidelines are required to avoid conflicting mandates and ensure smoother prosecution procedures.

#### 5.4 Gender Inclusivity Gaps

Although the BNS acknowledges **transgender persons** within its definition clauses, sexual offence laws still largely operate within a binary, gender-specific framework. Provisions such as those dealing with rape do not accommodate male or transgender victims, thereby undermining the inclusive intent of the new definitions. This omission contradicts evolving constitutional jurisprudence which recognizes gender identity as a matter of personal autonomy and equality.

Landmark rulings such as *NALSA v. Union of India*, (2014) 5 SCC 438, which recognized the rights of the third gender, and *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1, which decriminalized homosexuality, reflect a progressive constitutional ethos that should have informed the redrafting of substantive sexual offence laws.

#### 5.5 Judicial Readiness and Interpretative Challenges

The Indian judiciary will bear the crucial task of shaping the interpretation of these newly framed codes. With decades of precedent based on the IPC and CrPC, the shift to BNS and BNSS demands extensive retraining of judges, prosecutors, and defense lawyers.

Additionally, vague clauses and novel legal concepts introduced in the new codes will require judicial interpretation to establish clarity and consistency. For instance, how courts interpret the community service provision under Section 23 BNS or apply the mob lynching

clause in Section 103(2) BNS will influence broader public trust and system credibility. **The judiciary's readiness, coupled with evolving jurisprudence, will be instrumental in ensuring that these reforms serve their intended purpose of equitable, efficient, and modern justice delivery.**

Furthermore, the judiciary's approach to sentencing, especially in cases of heinous crimes, continues to be guided by precedents like *Shimbu v. State of Haryana*, (2014) 13 SCC 318, where the Court stressed the need for deterrent sentencing in rape cases. Such guidance will remain vital in upholding justice under the new framework.

### 6. International Comparison and the Imperative for Reform

Understanding the evolution of India's criminal justice system requires situating it within the wider global context of legal modernization. While many nations overhauled their criminal laws after World War II to promote inclusivity, procedural fairness, and digital readiness, India continued to operate under legal codes conceived during British colonial rule. The Indian Penal Code (IPC), Code of Criminal Procedure (CrPC), and Indian Evidence Act, though considered progressive for the 19th century, were designed for colonial administration—not for a sovereign, democratic republic.

Unlike India, countries like the United Kingdom, United States, Germany, and Canada undertook significant reforms to adapt to shifting social values, technological advancements, and evolving notions of justice. These nations embraced concepts such as restorative justice, plea bargaining, electronic evidence protocols, and gender-neutral laws. Meanwhile, India's outdated statutes struggled to address contemporary legal challenges, particularly those arising from cybercrime, delayed justice delivery, and the marginalization of victims within the judicial process.

International legal standards also began to evolve, setting a benchmark that India's colonial

laws failed to meet. Instruments like the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and UN guidelines on victim and witness protection emphasized principles that were largely absent in India’s old legal framework. These included due process rights, gender equality, victim compensation, and fair trial guarantees.

The enactment of the Bharatiya Nyaya Sanhita (BNS), Bharatiya Nagarik Suraksha Sanhita (BNSS), and Bharatiya Sakshya Adhinyam (BSA) represents a conscious break from the colonial past. These new laws are designed to infuse greater efficiency, inclusiveness, and technological integration into India’s criminal justice system. More than just a legislative change, this reform is a symbolic realignment—marking India’s commitment to delivering justice that reflects the aspirations of a constitutional democracy and resonates with global legal standards.

6.1 Comparative Overview of the Indian Penal System with International Models (Pre-Reform)

India’s older criminal laws, deeply rooted in colonial jurisprudence, primarily emphasized retribution, state authority, and punitive control. Individual rights, victim participation, and rehabilitative justice were peripheral or altogether missing. In contrast, countries around the world revised their penal systems in line with evolving democratic ideals and technological transformations.

- **United Kingdom:** After shaping many of India’s colonial laws, the UK modernized its system by enacting the Human Rights Act, 1998, and introducing non-custodial sentencing measures. The UK now prioritizes rehabilitation, especially for youth and non-violent offenders, and incorporates victim impact assessments into its sentencing practices.
- **United States:** The U.S. advanced constitutional protections through the

Fourth, Fifth, and Sixth Amendments, creating safeguards against unlawful detention, self-incrimination, and unfair trials. Innovations such as plea bargaining, Miranda rights, and evidence exclusion have become central to its legal system—tools unavailable under India’s prior CrPC.

- **Germany:** Germany’s justice system focuses on proportionality and rehabilitation. Its legal framework ensures clear evidentiary standards, detailed judicial reasoning, and strong institutional independence. Procedural speed and integrity are treated as core to fairness.
- **Canada and Australia:** These jurisdictions have led reforms in gender neutrality, sexual offence law, and indigenous justice systems. Victim rights, trauma-informed procedures, and digital transformation are now entrenched in their justice delivery mechanisms.

7. Global Alignment of New Criminal Laws

The Bharatiya Nyaya Sanhita (BNS), BharatiyaNagarik Suraksha Sanhita (BNSS), and Bharatiya Sakshya Adhinyam (BSA) represent India’s strategic attempt to align its criminal justice system with global legal standards. These statutes not only address long-standing gaps in India’s legal framework but also incorporate mechanisms that are widely practiced in other democratic nations.

Aspect	International Standards	New Indian Laws (BNS/BNSS/BSA)
Victim Rights	UNODC and EU directives emphasize participation, protection, and	BNSS enables victim participation (Sections 193(4) & (5)), in-camera

	compensation	trials, and shielding
Digital Evidence & Forensics	US Federal Rules & EU laws mandate forensic certification, metadata, and chain-of-custody tools	BSA mandates digital validation, metadata verification, and electronic record certification
Plea Bargaining & Trial Timelines	Adopted in UK, US, and South Africa to reduce delays and ensure judicial efficiency	BNS introduces plea bargaining (Section 269), charge framing in 60 days, judgments in 30 days
Sentencing and Rehabilitation	Focus on proportionality, alternative sentencing, and community reintegration	BNS includes community service (Section 23), graded punishments, and repeat offender clauses
Gender Inclusivity	Many countries adopt gender-neutral definitions of sexual offences	BNS recognizes transgender persons but retains gender-specific language in sexual offence laws

7.1 Comparative Analysis and Legal Interpretation

The comparative table above illustrates India's efforts to incorporate international best

practices. For instance, the formal recognition of victim rights and participation echoes the European Union's Victim Rights Directive. Similarly, the BSA's forensic verification and electronic record protocols bring India closer to the evidentiary standards established under U.S. law.

Nevertheless, challenges remain. India's continued use of gender-specific terms in sexual offences diverges from more inclusive practices in countries like Canada, which recognize a broader spectrum of gender identities. Likewise, while procedural timelines are promising, their success hinges on robust implementation, infrastructure development, and judicial training.

7.2 International Case Examples

- United Kingdom – Victim Rights:** The UK's *Victims' Code* is a comprehensive framework that ensures crime victims are informed of their rights, engaged in the justice process, and protected from re-traumatization. The BNS mirrors this approach by formally recognizing victim participation rights under Sections 193(4) and (5), enabling in-camera trials, and introducing procedural safeguards such as digital shielding and witness protection.
- United States – Digital Evidence:** In *Riley v. California*, 573 U.S. 373 (2014), the U.S. Supreme Court mandated warrants for accessing digital content, underlining the importance of privacy in digital investigations—a concern addressed through certification mandates in the BSA.
- Germany – Plea Negotiation Oversight:** In Germany, the process of *Verständigung* (mutual understanding) allows limited plea bargaining under strict judicial supervision. India's BNS introduces plea bargaining under Section 269 as a new feature, offering a way to address judicial backlog.

However, unlike Germany, the Indian legal system is still developing robust safeguards and oversight mechanisms to ensure fair implementation.

- **Canada – Gender-Neutral Offences:** Canada’s Criminal Code uses gender-neutral definitions for sexual offences, such as replacing the term “rape” with “sexual assault” and ensuring that all individuals—regardless of gender identity—can be victims or perpetrators. This reflects a broader commitment to equality, dignity, and the protection of LGBTQ+ rights. India’s BNS, while progressive in recognizing transgender individuals in its definitions, still retains gender-specific language in key sections related to sexual violence.

### Conclusion

The repeal and replacement of India’s colonial criminal law triad—the Indian Penal Code (IPC), Code of Criminal Procedure (CrPC), and Indian Evidence Act (IEA)—with the Bharatiya Nyaya Sanhita (BNS), BharatiyaNagarik Suraksha Sanhita (BNSS), and BharatiyaSakshyaAdhiniyam (BSA) marks a monumental paradigm shift in the country’s criminal justice architecture. This transformation is not just a legislative reform but a reimagining of the very foundations upon which justice is conceptualized and delivered in a modern democratic society.

The earlier statutes, though pathbreaking in their time, were rooted in the colonial objective of state control and penal authority, often sidelining individual rights, procedural fairness, and societal evolution. In contrast, the new laws are structured around the principles of **citizen-centric justice, technological integration, and victim empowerment**. They respond directly to the evolving needs of contemporary Indian society—marked by rapid digitization, complex transnational crimes, and heightened public consciousness around civil liberties and accountability.

Significant innovations such as **Zero FIR, time-bound charge framing and judgment delivery, video-conferenced witness testimonies, pre-trial forfeiture of crime proceeds, and mandatory forensic involvement** reflect a strategic move toward procedural agility and evidentiary credibility. Additionally, provisions that prioritize **victim participation, digital authentication of evidence, and gender-sensitive practices** underscore the intent to create a more inclusive, equitable, and responsive system of justice.

Importantly, the reforms exhibit an intent to harmonize Indian criminal law with **international best practices**, drawing inspiration from legal systems in the UK, US, Germany, and Canada—particularly in areas like digital forensics, plea bargaining, victim rights, and due process.

The BNS, BNSS, and BSA do not merely represent legal continuity—they symbolize India’s **transition from punitive colonial governance to a participatory constitutional democracy**. If implemented faithfully, these laws have the potential to transform the justice system into one that is swift, transparent, and deeply aligned with the values of modern India: **liberty, equality, dignity, and accountability**.