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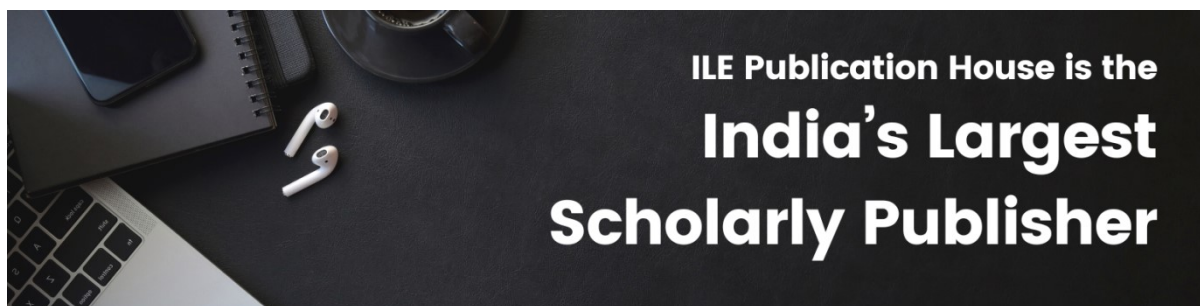
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COMPARATIVE ANALYSIS OF IPC 1860 AND BNS 2023

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Abstract

The **Indian Penal Code (IPC)**, enacted in **1860** during British colonial rule, remained the principal criminal statute in India for more than **163 years**. Designed to serve colonial administrative interests, the IPC emphasized control over justice, with limited adaptation to evolving societal norms, technological developments, or indigenous values. Recognizing the urgent need to modernize and decolonize the penal system, the **Bharatiya Nyaya Sanhita (BNS), 2023** was introduced and enacted by the Parliament to replace the IPC entirely. This research paper presents a **comprehensive comparative analysis** between the IPC and BNS, examining differences in legislative structure, terminology, classification of offences, and the philosophical underpinnings of criminal law.

Key features of the BNS include the **repeal of outdated colonial provisions** such as the sedition law, **codification of new offences** like organized crime and terrorism, **recognition of digital and cybercrimes**, and a more **victim-centric approach** to justice. Moreover, the BNS emphasizes **gender neutrality**, simplifies archaic language, and seeks to make the justice system more accessible and efficient for Indian citizens. The study also explores the implications of these changes on law enforcement, judicial interpretation, and access to justice. Overall, the transition from IPC to BNS signifies not just a statutory change, but a **paradigm shift from colonial criminal jurisprudence to a progressive, inclusive, and constitutionally aligned legal framework**.

Keywords: Indian Penal Code 1860 (IPC); Bharatiya Nyaya Sanhita 2023 (BNS); Comparative Criminal Law; Decolonization of Indian Law; Criminal Justice Reform; Legal Modernization in India; Victim-Centric Criminal Justice; Cyber and Digital Offences; Colonial Legacy and Indian Legal System; Gender Neutrality in Criminal Law; Sedition Law Repeal; Organized Crime and Terrorism Legislation; Access to Justice in India; Criminal Jurisprudence India; Law Reform in 21st Century India.

1. Introduction

The **Indian Penal Code (IPC)**, enacted in **1860**, was a pioneering attempt by the British colonial administration to unify and codify criminal laws across the Indian subcontinent. Primarily drafted by **Lord Thomas Babington Macaulay**, the IPC was designed to serve colonial objectives, emphasizing state authority and uniformity over indigenous legal traditions. Although the code was comprehensive and

remarkably resilient for its time, it inherently reflected the values, priorities, and language of a colonial power ruling over a vastly different society. Over the years, it underwent several amendments to address changing socio-political contexts, yet many of its core provisions, terminologies, and judicial philosophies remained rooted in 19th-century colonial ideology.

Recognizing the pressing need for legal decolonization and modernization, the Government of India introduced the **Bharatiya Nyaya Sanhita (BNS)** in **2023**, which officially came into force on **1st July 2024**, replacing the IPC in its entirety. This legislative transformation is not merely symbolic; it represents a substantial shift in how criminal law is conceptualized, codified, and applied in a sovereign, democratic republic. The BNS aims to establish a justice system that is more **citizen-oriented, technology-aware, and aligned with constitutional principles**, such as **equality, justice, dignity, and due process**.

This paper seeks to critically analyze the transition from the IPC to the BNS by exploring their **structural frameworks, definitional scopes, and philosophical orientations**. It examines how the BNS addresses longstanding criticisms of the IPC, including the persistence of colonial-era offences (like sedition), gender-biased language, and inadequate provisions for modern crimes such as cyber offences and organized criminal activities. Additionally, the study considers the potential implications of this shift for **law enforcement agencies, judicial institutions, and citizens' rights**.

In doing so, the research contributes to the broader discourse on **legal reform in postcolonial societies**, particularly how law must evolve to reflect the cultural, social, and technological realities of the nation it governs. The comparison not only reveals the progress made but also highlights areas that require further attention to realize the vision of a truly indigenous and equitable legal system in India.

2. Historical and Legislative Background

The **Indian Penal Code, 1860 (IPC)**, was a product of British colonial governance, enacted as a comprehensive codification of criminal law applicable to the entire British Indian territory. It was primarily drafted under the leadership of **Lord Thomas Babington Macaulay**, who chaired the First Law Commission established in 1834. The IPC was formally adopted in 1860 and

came into force in 1862, providing a uniform legal framework for defining crimes and prescribing punishments throughout colonial India. Its enactment marked a significant departure from the diverse and often regionally inconsistent criminal laws that had previously existed under various kingdoms, princely states, and customary systems of justice²⁸².

Despite being a colonial-era legislation, the IPC demonstrated remarkable durability, remaining in force (with amendments) for over 160 years. However, its foundational principles and legal terminology remained largely unchanged, and many of its provisions, such as those related to **sedition (Section 124A)** and **unnatural offences (Section 377)**, drew criticism for being archaic, colonial in spirit, and inconsistent with democratic and constitutional ideals²⁸³.

In an effort to modernize India's criminal law and align it with contemporary social, technological, and legal standards, the **Bharatiya Nyaya Sanhita, 2023 (BNS)** was introduced by the Indian government. It was passed by **the Parliament of India as Act No. 45 of 2023** and is set to replace the IPC with effect from **1st July 2024**, with the exception of **Section 106(2)**, which is yet to be notified²⁸⁴. The BNS represents a paradigm shift from colonial jurisprudence to an indigenous legal framework envisioned to better reflect the values of the Indian Constitution.

The objectives behind the enactment of the BNS are multi-fold:

- **To eliminate colonial vestiges and outdated legal concepts** by replacing archaic terminology and provisions.
- **To make the law more accessible and comprehensible** through simplification of language and structure.

²⁸² Indian Penal Code, 1860 – Preamble and historical introduction by the First Law Commission of India.

²⁸³ Law Commission of India, *Consultation Paper on Sedition*, 2018.

²⁸⁴ Government of India, *Notification No. S.O. 850(E)* dated 23rd February 2024, Ministry of Law and Justice.

- To prioritize victims' rights and dignity by embedding a **victim-centric justice approach** in several procedural and substantive aspects.
- To recognize and address new-age crimes, particularly those involving **cybersecurity, digital fraud, organized crime, and terrorism**, which were inadequately covered or completely absent in the IPC²⁸⁵.

The enactment of the BNS is part of a broader initiative that includes replacing other colonial-era criminal laws such as the **Code of Criminal Procedure, 1973** and the **Indian Evidence Act, 1872**, with the **Bharatiya Nagarik Suraksha Sanhita, 2023** and the **Bharatiya Sakshya Adhiniyam, 2023**, respectively. Collectively, these reforms aim to transform India's criminal justice system to be more just, efficient, technology-enabled, and citizen-friendly.

3. Structural Comparison

One of the most visible distinctions between the Indian Penal Code, 1860 and the Bharatiya Nyaya Sanhita, 2023 lies in their **structural composition and legislative design**. While the IPC served as a pioneering piece of legal codification during the colonial era, its structural complexity and outdated language created interpretational challenges over time. The BNS, in contrast, adopts a **streamlined and accessible framework**, reflecting India's current socio-legal realities.

Tabular Overview

Criteria	IPC 1860	BNS 2023
Number of Chapters	23 Chapters + 2 Schedules	20 Thematic Chapters
Total Sections	511 Sections	358 Sections
Organizational	Sequential	Thematically

²⁸⁵ Ministry of Home Affairs, "Statement of Objects and Reasons – Bharatiya Nyaya Sanhita, 2023".

Criteria	IPC 1860	BNS 2023
Style	and often overlapping	structured and logically grouped
Language	Archaic, colonial English	Contemporary, simplified, and citizen-friendly

a. Number of Chapters and Sections

The **IPC contains 23 chapters and 511 sections**, including several amendments and insertions over the decades. In contrast, the **BNS is significantly leaner**, comprising **20 chapters and 358 sections**. This reduction reflects the elimination of redundant provisions and the merger or reclassification of related offences. For instance, BNS consolidates offences against women and children into a single dedicated chapter, enhancing thematic clarity.

b. Organization and Classification

The IPC follows a **sequential structure**, where sections are arranged chronologically without always grouping related offences logically. For example, offences against the human body and against property are spread across chapters without a standardized pattern. Over time, this led to **legal overlap and interpretive difficulties**.

The BNS corrects this by adopting a **thematic organizational structure**, grouping offences by subject-matter such as:

- Offences Against Women and Children (Chapter V),
- Offences Against the Human Body (Chapter VI),
- Offences Against the State (Chapter VII), etc.

This enhances **navigability** for both legal professionals and the general public,

supporting the goal of a more **citizen-centric criminal code**.

c. Language and Terminology

One of the longstanding criticisms of the IPC was its use of **19th-century legal English**, which often created barriers for laypersons, law enforcement officers, and even lawyers unfamiliar with colonial-era phrasing. Terms such as "mischief", "affray", "transportation for life", and "unnatural offences" lacked clarity in the modern context.

The BNS replaces such terms with **plain, modern language**, improving **comprehension and usability**. For instance:

- "Sedition" has been removed and replaced with clearer provisions dealing with threats to **sovereignty and integrity**.
- "Transgender" individuals are explicitly recognized under gender definitions, reflecting inclusivity.

d. Legislative Intent and User Accessibility

Unlike the IPC, which was drafted to serve the interests of a colonial administration, the BNS has been **designed with a rights-based, constitutional lens**. The structural simplification is not merely cosmetic—it reflects a conscious effort to make criminal law more accessible to citizens, judges, police officers, and legal scholars alike.

4. Key Substantive Changes

The **Bharatiya Nyaya Sanhita (BNS), 2023** introduces several **substantive reforms** to the criminal justice framework, many of which mark a **departure from colonial-era concepts** enshrined in the **Indian Penal Code (IPC), 1860**. These reforms reflect evolving constitutional values, international human rights standards, and the need to address **new forms of crime** in the digital and globalized age.

a. Sedition (Section 124A of IPC)

Under the IPC, **Section 124A** defines sedition as any act that attempts to bring hatred, contempt, or disaffection towards the government, punishable with **imprisonment for life** or with a term extending up to three years, along with fine²⁸⁶. This provision has long been criticized for its **colonial origins** and its **potential misuse against political dissenters**.

The BNS **repeals sedition** altogether. In its place, **Section 152** criminalizes acts that **"endanger the sovereignty, unity, and integrity of India,"** with a specific emphasis on **inciting armed rebellion, subversive activities, and encouraging secessionist movements**²⁸⁷. This modernized provision seeks to distinguish between **violent acts** against the State and **peaceful dissent**, thereby **protecting free speech** within constitutional bounds.

b. Gender Neutrality and Women-Centric Laws

The IPC often uses **gendered terminology**, such as references to "man" and "woman", and provides **limited recognition to the transgender community**. Certain offences were also not explicitly framed to protect women from **emerging forms of violence**.

The BNS corrects this by adopting **gender-neutral language**, using the term **"person"** across various sections, and explicitly recognizing **"transgender"** individuals under Section 2(10)²⁸⁸.

Additionally, **Chapter V of the BNS** is exclusively devoted to **offences against women and children**, consolidating and expanding provisions related to **sexual assault, stalking, voyeurism, acid attacks, cruelty, and trafficking**²⁸⁹. These reforms signal a shift toward **victim-centric** and **inclusive criminal jurisprudence**.

²⁸⁶ Indian Penal Code, 1860, Section 124A.

²⁸⁷ Bharatiya Nyaya Sanhita, 2023, Section 152.

²⁸⁸ Bharatiya Nyaya Sanhita, 2023, Section 2(10).

²⁸⁹ BNS, Sections 63–79: Offences against Women and Children.

c. Terrorism and Organized Crime

The IPC did not contain dedicated provisions on **terrorism** or **organized crime**, relying instead on a patchwork of laws such as the **Unlawful Activities (Prevention) Act, 1967 (UAPA)** and **special enactments** for enforcement.

In contrast, the BNS includes **Sections 111–113**, which define and penalize **organized crime** and **terrorist acts**. These provisions encompass activities conducted by **criminal syndicates**, including acts of **extortion, trafficking, cybercrime**, and **funding of terrorism**. This structural inclusion aligns Indian criminal law with **international conventions on transnational organized crime**.

d. Attempt to Commit Suicide

Under **Section 309 of the IPC**, attempting suicide was a criminal offence, punishable with **simple imprisonment for up to one year**. This outdated approach criminalized **mental health struggles** rather than providing support.

The BNS, through **Section 226**, **decriminalizes suicide attempts**, especially in cases where the act is committed under **duress or as a form of protest or coercion**, thereby **aligning with the Mental Healthcare Act, 2017**, which mandates care and rehabilitation rather than punishment²⁹⁰.

e. Digital and Electronic Crimes

The IPC, being a 19th-century statute, did not anticipate the **digital age**. While **Section 29A** introduced the term "**electronic record**", it was not integrated into most substantive offences.

The BNS significantly updates this by embedding **digital terminology** throughout the statute. **Section 2(8)** includes **electronic and digital records** within the definition of documents. Provisions like **Sections 340 and 341** criminalize **digital forgery, falsification of electronic documents, and cyber frauds**, addressing the **increasing reliance on**

technology in both criminal acts and their prosecution²⁹¹.

f. Offences Against Children and Women

Unlike the IPC, where offences against women and children were **dispersed across various chapters**, the BNS consolidates these into a **single, dedicated chapter (Chapter V)**. This improves **legal clarity** and reflects a **policy-level emphasis** on protecting vulnerable populations.

Noteworthy additions include:

- **Section 95:** Criminalizes the **engagement or employment of children** to commit any offence, recognizing the role of children in gang activities or trafficking.
- **Section 304:** Defines and punishes "**snatching**", a new category of theft by sudden force, often targeting women and children²⁹².

These provisions illustrate the BNS's commitment to **modern legal recognition of crimes** that disproportionately affect **marginalized and underprotected group**

5. Philosophical and Conceptual Shift

The transition from the **Indian Penal Code, 1860 (IPC)** to the **Bharatiya Nyaya Sanhita, 2023 (BNS)** is not just a change in legislative content, but a **transformational shift in the legal philosophy** underpinning India's criminal justice system. The BNS introduces a distinctly **Indian ethos**, rooted in **constitutional morality, restorative justice, and citizen empowerment**, thereby moving away from the punitive, authority-driven foundations of colonial criminal law.

a. From Colonial to Indian Ethos

The **IPC** was drafted by the **First Law Commission under Lord Macaulay** during British rule, primarily to **centralize and**

²⁹⁰ Mental Healthcare Act, 2017, Section 115.

²⁹¹ BNS, Sections 2(8), 340, 341.

²⁹² BNS, Sections 95 (child involvement in crimes), 304 (snatching).

consolidate legal authority in the hands of the colonial administration²⁹³. Its focus was on **state supremacy**, preservation of order, and deterrence through harsh punishment, often at the cost of individual liberties and native legal traditions. The Indian subject was seen more as a subject to be governed than as a citizen to be protected.

In contrast, the **BNS** is framed within the **constitutional framework of a democratic republic**, where **citizens are the focal point of justice delivery**. The law now aims to ensure **rights-based protection**, promote **equitable enforcement**, and reflect **indigenous legal consciousness and contemporary social realities**²⁹⁴. For instance, provisions in the BNS aim to **safeguard free expression**, address **gender inclusivity**, and **modernize language** to make the law more accessible to the general population.

"We are not merely repealing colonial laws; we are creating a criminal law system in tune with Indian values, realities and aspirations."
– *Statement by the Union Home Minister in Parliament during the introduction of the BNS*

b. Emphasis on Victim-Centric Justice

A major philosophical shift evident in the BNS is the **reorientation of criminal justice from offender-centric to victim-centric**. Under the IPC, the focus was largely on **punishment of the offender**, with relatively less regard for **the needs, rights, or participation of the victim** in the criminal justice process.

The BNS introduces measures that aim to **empower and protect victims**, such as:

- **Time-bound investigation and trial:** BNS provisions mandate completion of investigation within **90 days** and trials

within **2 years** for specific categories of offences, reducing undue delays²⁹⁵.

- **Increased role of victim in proceedings:** Victims now have a greater say in plea bargaining and sentencing recommendations.
- **Focus on rehabilitation:** The BNS promotes **compensation, psychosocial support, and protection of identity**, especially in offences against women and children.

This approach aligns with international standards, including the **UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985)**, which advocates for victims' right to information, participation, and redress.

c. Proportionality in Sentencing

One of the key legal principles missing in the IPC was **proportionality**—the idea that **punishment should correspond in severity to the gravity of the offence**. The IPC often prescribed **overly harsh penalties**, including **life imprisonment** for crimes that may not warrant such severe sentences in today's context. Additionally, **limited options for non-custodial sentences** contributed to overcrowded prisons and delayed rehabilitation.

The **BNS addresses this imbalance** by promoting the **principle of proportionality in sentencing**, with specific focus on:

- **Graduated penalties** for graded offences (e.g., different categories of theft or hurt).
- **Inclusion of community service, probation, and fines** as alternatives to imprisonment for minor offences²⁹⁶.
- **Enhanced judicial discretion** in determining sentences based on

²⁹³ First Law Commission of India (1834) chaired by Lord Macaulay; Indian Penal Code, 1860 – Preamble.

²⁹⁴ Government of India, *Statement of Objects and Reasons*, Bharatiya Nyaya Sanhita, 2023.

²⁹⁵ Bharatiya Nyaya Sanhita, 2023, Sections pertaining to trial timelines (specific timeframes are context-dependent).

²⁹⁶ Bharatiya Nyaya Sanhita, 2023, Sections 8–12: Provisions related to punishments, fines, community service.

aggravating and mitigating factors, rather than fixed punitive templates.

This change reflects a shift toward **restorative and reformative justice models**, which prioritize **rehabilitation, social reintegration**, and **preventing recidivism**, rather than merely inflicting retribution.

6. Terminological and Language Reforms

One of the notable and necessary innovations introduced by the **Bharatiya Nyaya Sanhita, 2023 (BNS)** is its comprehensive reform in **terminology and legislative language**. Recognizing that **language is not merely a medium but also a carrier of ideology**, the BNS seeks to **decolonize the legal vocabulary** that persisted in the Indian Penal Code, 1860 (IPC), making it more accessible and reflective of sovereign Indian values.

a. Removal of Colonial Terminology

The IPC contained references such as **"British India," "Her Majesty," "Queen,"** and other colonial designations, which had long ceased to be relevant post-independence. Despite constitutional sovereignty, these archaic terms remained embedded in criminal statutes²⁹⁷.

The BNS replaces such references with **"Republic of India," "Central Government,"** or **"State Government,"** thereby aligning the legal text with the **post-independence constitutional identity of India**. This shift is symbolic and substantive, indicating the removal of colonial residues from Indian criminal law.

b. Updated Definition of Offences

The IPC's framework was developed in the 19th century, long before the emergence of **cybercrime, financial fraud via electronic platforms, identity theft, stalking through digital means, and organized criminal networks**. As a result, many modern offences

either had **no legal definition** or were addressed through **ad hoc special laws**.

The BNS integrates these contemporary crimes into the main statute, with updated definitions that include:

- **Cyber and digital crimes**, including falsification of electronic records and digital document forgery (Sections 2(8), 340–341)²⁹⁸;
- **Sexual offences**, including stalking, voyeurism, acid attacks, and marital rape during separation (Sections 63–79);
- **Organized and terrorist crimes**, codified for the first time within the general criminal code (Sections 111–113).

c. Simplification of Language

The BNS aims to **democratize legal understanding** by replacing the **dense, Victorian legal English** of the IPC with **plain and comprehensible language**. For example:

- Terms like "transportation for life" (used in IPC) have been replaced by "imprisonment for life";
- Gender-neutral pronouns such as "person" instead of "man" or "woman" are widely used.

These changes are intended to make the law **more accessible to the common citizen, easier to interpret by law enforcement**, and **less intimidating to victims and laypersons**, thereby **promoting legal literacy and reducing dependency on legal intermediaries**.

7. Critical Appraisal

While the **Bharatiya Nyaya Sanhita, 2023** represents a significant leap in the modernization of India's criminal law, it is essential to critically assess both its **strengths and limitations**.

²⁹⁷ Indian Penal Code, 1860 – See references to "British India", "Queen", etc., in Sections 3, 4, and pre-1950 amendments.

²⁹⁸ BNS Sections 2(8), 340, 341 – Definition of digital documents and offences.

Merits of the BNS

a. Removal of Colonial Relics

The **repeal of the sedition law (Section 124A IPC)** and other colonial hangovers signals a decisive break from laws used historically to suppress dissent and freedom of expression²⁹⁹.

b. Introduction of Organized Crime and Terrorism Laws

By codifying provisions for **organized crime and terrorist acts (Sections 111–113)** within the general penal law, BNS addresses long-standing gaps in the IPC and brings India closer to global standards in combating transnational crimes.

c. Enhanced Gender and Child Rights Protections

The BNS promotes **gender neutrality** and expands the scope of protections for **women and children**, including crimes such as **child exploitation, trafficking, and digital sexual harassment**, aligning with the constitutional mandate of dignity and equality.

d. Responsiveness to the Digital Era

Provisions dealing with **cybersecurity breaches, identity theft, digital forgery, and online frauds** are explicitly included in the BNS, making the law **more effective in the digital age**³⁰⁰.

Concerns and Criticisms

a. Limited Public and Academic Consultation

One of the primary criticisms is that the **drafting process lacked comprehensive consultation** with legal scholars, human rights advocates, law enforcement professionals, and civil society organizations. This raises concerns about the **representativeness and inclusivity** of the reform process³⁰¹.

b. Ambiguity and Potential for Misuse

Certain provisions, such as **Section 152 (BNS)**—which criminalizes acts endangering “sovereignty and integrity of India”—have been criticized for **vague phrasing**, which may leave room for **subjective interpretation and misuse**, potentially curbing dissent under the guise of national security.

c. Implementation and Capacity Building Challenges

The successful rollout of BNS requires **extensive retraining of police personnel, prosecutors, and judiciary**. Without this, there is a risk that **legacy understanding of IPC provisions** may lead to **misapplication or confusion** during trials and investigations.

8. Conclusion

The **Bharatiya Nyaya Sanhita, 2023 (BNS)** represents a significant and long-overdue reform in India's criminal law landscape. As a replacement for the **Indian Penal Code, 1860**, a colonial-era statute rooted in British administrative priorities, the BNS marks a **transformational shift** toward a legal system that is **rooted in Indian constitutional principles, responsive to modern-day realities, and aligned with the values of a democratic republic**.

By introducing provisions that account for **cybercrime, organized crime, terrorism, gender inclusivity, and victim-centric justice**, the BNS demonstrates a clear intention to **modernize legal content and improve the structural coherence** of criminal legislation. It simplifies legal language, updates definitions, removes outdated and misused laws like **sedition**, and incorporates mechanisms for **speedier and more equitable justice delivery**. These changes indicate a shift from a **punitive colonial model** to a **restorative and rights-based framework**, with the citizen—not the state—as the focal point.

²⁹⁹ Government of India, Press Release – “Repeal of Sedition Law and Criminal Law Reforms”, Ministry of Law and Justice, 2023.

³⁰⁰ National Cyber Security Strategy Reports, 2022 and 2023.

³⁰¹ LiveLaw.in – “Experts Criticize Lack of Public Input in BNS Drafting”, August 2023.

However, while the **textual reform** is commendable, the **real success of the BNS will lie in its implementation**. This will require:

- **Capacity building** across police forces, prosecution, and judiciary;
- **Uniform training** on new provisions and terminologies;
- **Infrastructure and procedural modernization**, including the use of digital tools;
- **Judicial clarity** in interpreting new sections, especially those that replace ambiguous or controversial IPC provisions;
- And most importantly, **ongoing legislative review** to adapt to emerging societal and technological changes.

Moreover, the legitimacy of this reform depends on **sustained public engagement, academic scrutiny, and transparency in enforcement**. A law that is truly democratic must not only be created for the people but also be shaped by their participation and understanding.

In conclusion, the **Bharatiya Nyaya Sanhita, 2023** offers a promising foundation for a **future-ready criminal justice system**—one that is **more inclusive, accessible, and fair**. Its long-term success, however, will be determined by how effectively its ideals are translated into practice.

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