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## RECASTING CRIMINAL LAW IN INDIA: A CRITICAL APPRAISAL OF SUBSTANTIVE REFORMS UNDER THE BHARATIYA NYAYA SANHITA

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### ABSTRACT

The Bharatiya Nyaya Sanhita, 2023 (BNS) is a landmark in the history of Indian law. It replaces the Indian Penal Code (IPC) 1860 of colonial era that had been in force governing criminal law in excess of 160 years.

BNS came into actions on 25 December 2023 and became effective on 1 July 2024. The reform seeks to decolonise the criminal justice system in addition to dealing with the contemporary problems like cybercrime, terrorism, and organized crime. The BNS introduced substantive changes that are critically constructive because of this paper. It examines institutional changes, new crimes, stiffer punishment, and victim-centered strategies.

The main innovations were the community service as a sentence, consideration of transgender members, the inclusion of digital evidence, and special chapters on crimes related to women and children. There are also major criticisms in the study. The critics observe that 80 per cent of the IPC is still not enforced, definitions are broad and can cause arbitrary application, cybercrime laws are limited and there are still difficulties in implementing them.

To sum up, although BNS is a significant process toward modernization, its transformative capacity does not have enough possibilities due to its structural continuity with IPC. The achievement of its goals will have to be accompanied by strong enforcement systems, judicial interpretation, and structural changes in policing and investigation.

**KEYWORDS** – Bharatiya Nyaya Sanhita, Criminal Law Reform, Indian Penal Code, Decolonization, Substantive Criminal Law, Cybercrime, Terrorism, Organized Crime, Community Service, Women and Child Protection, Digital Evidence, Legislative Reforms

technological advancements, and evolving societal norms.<sup>1195</sup>

### INTRODUCTION

The Indian Penal Code, 1860, drafted by Lord Thomas Babington Macaulay, has served as the cornerstone of India's criminal justice system for over a century and a half. While it was a remarkable codification achievement for its time, the IPC was fundamentally a colonial instrument designed to maintain British control over the Indian populace. Post-independence, despite numerous amendments and judicial interpretations, the IPC increasingly struggled to address the complexities of modern criminality,

The recognition of these limitations catalyzed a comprehensive review of India's criminal justice framework. In 2023, the Indian Parliament embarked on an ambitious legislative project to replace the colonial-era criminal laws with three new statutes: the Bharatiya Nyaya Sanhita (BNS) to replace the IPC, the Bharatiya Nagarik Suraksha Sanhita (BNSS) to replace the Code of

<sup>1195</sup> Indian Penal Code, No. 45 of 1860, INDIA CODE; Ministry of Home Affairs, Gov't of India, *Statement of Objects and Reasons, Bharatiya Nyaya Sanhita, 2023*.

Criminal Procedure, 1973, and the Bharatiya Sakshya Adhiniyam (BSA) to replace the Indian Evidence Act, 1872.<sup>1196</sup> This trilogy of reforms represents the most significant overhaul of India's criminal justice system since independence.

The Bharatiya Nyaya Sanhita received Presidential assent on December 25, 2023, and came into force on July 1, 2024. The statute comprises 358 sections organized into 20 chapters, representing a significant streamlining from the IPC's 511 sections across 23 chapters. The stated objectives of the BNS include decolonizing criminal law, incorporating judicial precedents, expanding jurisdictional scope to digital platforms, prioritizing crimes against women and children, and rationalizing penalties and fines.<sup>1197</sup>

The Indian law community is however having a hot debate over the reforms. The proponents argue that Bharatiya Nyaya Sanhita (BNS) modernizes the criminal legislation addressing the current problems such as terrorism, organized crime, and mob lynching as well as concerns about victim rights. The opposition, however, lay the blame on the fact that over 80 percent of the BNS provisions merely reiterate the IPC with cosmetic name changes and cite such long-standing issues as overcrowded prisons, sluggish courts, and institutional discrimination.

This is a critical examination of substantive changes that the BSN brought about in this research paper. Through the tools of doctrinal analysis, comparison of one with another system, and an inquiry into how the paradigm shift is being inadvertently implemented in practice as opposed to being a vanity of words upon paper.

## RESEARCH METHODOLOGY

This research employs a doctrinal legal research methodology, relying primarily on the analysis of primary legal sources including the Bharatiya Nyaya Sanhita, 2023, the Indian Penal Code, 1860, and relevant constitutional provisions. The study examines the legislative history, parliamentary debates, and the Standing Committee on Home Affairs' reports on the criminal law reforms.<sup>1198</sup>

The analysis is based on a comparative method which will do a systematic comparison of provisions of BNS with the corresponding constative parts of IPC to ascertain changes, additions, deletions and alterations in their structure. This comparison also casts an eye on international human rights law systems, and in particular how the same has been concluded regarding other post-colonial jurisdictions such as South Africa and the UK with their respective criminal law reforms.

Secondary resources such as academic articles, legal commentaries, judicial decisions and expert writings in law journals and databases are central to the research. The analysis specifically draws on the broad array of recent scholarly criticisms and professional evaluations made since BNS came into place and effect.

The study also assumes an analytical perspective while analyzing constitutional aspects relating to BNS provisions in relation with the basic rights provided under the Articles 14 (equality before law), 19 (freedom of speech and expression) and 21 (protection life and personal liberty) of Indian Constitution. This approach allows a full evaluation of whether the positive changes are in conformity with constitutional morality and international human rights norms.

<sup>1196</sup> Bharatiya Nyaya Sanhita Bill, 2023; Bharatiya Nagarik Suraksha Sanhita Bill, 2023; Bharatiya Sakshya Adhiniyam Bill, 2023 (India).

<sup>1197</sup> Bharatiya Nyaya Sanhita, No. 45 of 2023, INDIA CODE (effective July 1, 2024); Ministry of Home Affairs, Gov't of India, *Statement of Objects and Reasons, Bharatiya Nyaya Sanhita, 2023*.

<sup>1198</sup> Bharatiya Nyaya Sanhita, No. 45 of 2023, INDIA CODE; Indian Penal Code, No. 45 of 1860, INDIA CODE; INDIA CONST.; Standing Comm. on Home Affairs, Rajya Sabha, *246th Report on the Bharatiya Nyaya Sanhita (2023)*; Ministry of Home Affairs, Gov't of India, *Parliamentary Debates on Criminal Law Reforms (2023)*.

## REVIEW OF LITERATURE

The literature on the Bharatiya Nyaya Sanhita reveals a polarized academic discourse. Initial scholarly analyses focused on understanding the structural transformation and cataloging the new offences introduced. The Ministry of Home Affairs' official statements emphasized the decolonization agenda and the necessity of modernizing criminal law to address 21st-century challenges.<sup>1199</sup>

The Standing Committee on Home Affairs' Report No. 246 provides authoritative insights into the legislative intent behind specific provisions. The Committee examined concerns regarding vague definitions, potential for misuse of terrorism provisions, and the need for special procedural safeguards for serious offences.<sup>1200</sup>

There were some critical views from senior lawyers and constitutional experts. The primary criticisms are that the BNS is largely a reform of form – only approximately 20% is brand new law; while over 80% has been carbon copied from sections of IPC. Such scholars might argue that 'real' reform of criminal law would entail substantive reform of investigation practices, judicial efficiencies and systemic accountability, rather than simply being a matter of going through the statute books and producing yet another set of statutes.

Feminist legal scholarship has examined the BNS's provisions relating to sexual offences. While acknowledging the creation of a dedicated chapter on offences against women and children, scholars note the failure to implement key recommendations from the Justice Verma Committee (2013) regarding gender-neutral rape provisions and marital rape criminalization.<sup>1201</sup>

Literature on implementation challenges highlights the absence of adequate

infrastructure, training programs for law enforcement and judicial officers, and digital literacy requirements. Studies emphasize that legislative reform without parallel institutional capacity-building risks reducing the BNS to an ineffective symbolic exercise.

The forensic psychiatry literature examines the BNS's approach to mental health issues in criminal law. While appreciating the removal of stigmatizing terms like 'lunatic' and 'insane,' scholars express concern about the continued use of 'person of unsound mind' and the lack of clarity regarding community service implementation for mental health-related offences.<sup>1202</sup>

## METHOD: CRITICAL ANALYSIS OF SUBSTANTIVE REFORMS

### Structural Reorganization and Streamlining

The BNS represents a significant structural departure from the IPC, reducing 511 sections to 358 sections while reorganizing content into 20 chapters from the IPC's 23 chapters. This streamlining reflects an attempt to eliminate obsolete provisions, consolidate redundant sections, and enhance legislative clarity. Section 2 of the BNS provides comprehensive definitions, offering contextual clarity for terms used throughout the statute, thereby potentially reducing interpretative ambiguities that plagued IPC jurisprudence.<sup>1203</sup>

The reorganization includes dedicated chapters for specific categories of offences. Chapter V addresses 'Offences against Women and Children' as a unified category, signaling legislative recognition of their particular vulnerability to certain forms of criminality. This structural choice reflects the prioritization of crimes against women and children stated in the BNS's objectives, though it has generated debate regarding whether clubbing these

<sup>1199</sup> Ministry of Home Affairs, Gov't of India, *Press Releases on Criminal Law Reforms* (2023–2024).

<sup>1200</sup> Standing Comm. on Home Affairs, Rajya Sabha, *246th Report on the Bharatiya Nyaya Sanhita* (Nov. 10, 2023).

<sup>1201</sup> Justice J.S. Verma Comm., *Report on Amendments to Criminal Law* (Jan. 23, 2013).

<sup>1202</sup> *The Bharatiya Nyaya Sanhita Act (BNSA) 2023: Implications for Forensic Psychiatry in India*, PUBMED CENT. (2024); *Bharatiya Nyaya Sanhita*, No. 45 of 2023, INDIA CODE § 4

<sup>1203</sup> *Bharatiya Nyaya Sanhita*, No. 45 of 2023, INDIA CODE §§ 1–2; *Indian Penal Code*, No. 45 of 1860, INDIA CODE; Ministry of Home Affairs, Gov't of India, *Statement of Objects and Reasons, Bharatiya Nyaya Sanhita, 2023*.

categories together diminishes the distinct legal issues each faces.<sup>1204</sup>

## Introduction of Contemporary Offences

### 1. Terrorism

The BNS incorporates terrorism as an offence for the first time in India's general criminal law. Previously, terrorism was exclusively addressed through special legislation like the Unlawful Activities (Prevention) Act, 1967 (UAPA).<sup>1205</sup> To the BNS, terrorism, by definition, is to act with the intent to disrupt the country's cohesion, and the country's territorial, political, and economic security, or instill fear in the populace. This definition is ambiguous, and is potentially open to abuse.

The inclusion of 'economic security' within the terrorism definition has generated particular controversy. The term lacks precise legal definition within the BNS, creating scope for subjective interpretation and potentially enabling authorities to categorize various forms of economic protest or industrial action as terrorism.<sup>1206</sup> Constitutional scholars have warned that such vagueness risks chilling legitimate dissent and violating the freedom of speech and expression guaranteed under Article 19(1) (a) of the Constitution.

### 2. Mob Lynching

The BNS in fact pursues mob lynching which is a huge hole in the IPC. Today, when five or more individuals commit a murder or cause great bodily harm due to race, caste, community, sex, place of birth, language, personal belief or any other such area it is measured as an offence unto itself. The sentence may be as much as seven years and it may be

as much as life imprisonment and life imprisonment to death penalty and may include a fine. The shift was prompted by the insane increase in neighborhood conflicts and vigilante prosecutions we have experienced in the recent past. But there was a strange twist to it, the Standing Committee on Home Affairs pointed out: the minimum sentence on mob lynching (seven years) is even less than that of simple murder, which may be death or life. That is counterintuitive since mob lynching's are commonly a group decision, premeditated and with a discriminating punch, so you would think the stakes would be more than it.

### Reforms in Punishment Philosophy

The BNS increases penalties for many offenses, especially those related to women, children, and national security. Sexual offenses against minors are punishable by the death penalty or life imprisonment under aggravated circumstances. The rape of a minor below the age of eighteen is punishable by a minimum mandatory sentence of twenty years, an increase from the IPC. However, it is debatable whether increased punishment serves as a deterrent in the absence of improved investigation, prosecution, and conviction.

### Adaptation to Digital Technologies

The BNS attempts to incorporate technological developments by expanding the definition of 'document' to explicitly include electronic and digital records. Section 2(8) recognizes digital formats, electronic communications, and various forms of data as documents for criminal law purposes. This modernization enables prosecution of offences involving digital evidence and electronic transactions.<sup>1207</sup>

However, the BNS's approach to cybercrime remains fundamentally inadequate. Despite the proliferation of cyber-dependent and cyber-enabled crimes, the statute does not introduce specific provisions addressing contemporary

<sup>1204</sup> *Bharatiya Nyaya Sanhita*, No. 45 of 2023, INDIA CODE ch. V; Ministry of Home Affairs, Gov't of India, *Statement of Objects and Reasons, Bharatiya Nyaya Sanhita, 2023*.

<sup>1205</sup> *Unlawful Activities (Prevention) Act*, No. 37 of 1967, INDIA CODE.

<sup>1206</sup> *The Bharatiya Nyaya Sanhita, 2023*, § 113.

<sup>1207</sup> *Bharatiya Nyaya Sanhita*, No. 45 of 2023, INDIA CODE § 2(8).

digital offences such as cyberbullying, online stalking, phishing, ransom ware attacks, deep fakes, crypto currency fraud, or artificial intelligence-related crimes.<sup>1208</sup>

This omission is particularly glaring given that the Information Technology Act, 2000, provides limited and outdated provisions for cyber offences. The Act's scope remains restricted, and Section 66A, which addressed offensive electronic communications, was struck down by the Supreme Court in *Shreya Singhal v. Union of India* (2015) for violating freedom of speech.<sup>1209</sup> The BNS appeared an opportunity murdering to address the cyber-crime environment in a single pass by making it all a part of the general criminal code, and the truth is, it was never taken advantage of.

Experts in law have stressed the importance of updating the legal language across the whole criminal code to terms such as 'cyber,' 'virtual,' 'digital,' 'electronic,' and 'data,' to make these applicable to both physical and digitized crimes, particularly property-related offenses. The absence of this linguistic modernization may render important difficulties with enforcement, as courts will likely struggle to adapt their application of property and personhood concepts to suit digitized contexts.

### Replacement of Sedition with Acts against Sovereignty

One of my most important contributions to the BNS is the elimination of the sedition offence (Section 124A of the IPC) as this historically has attracted criticism due to its colonial roots and use to curb the dissenting political elements. The BNS substitutes the sedition with stipulations covering the offenses that jeopardize the sovereignty, unity, and integrity of India.

However, it can be argued that such substitution could be mostly cosmetic and little substantive. The new provisions share the same wording and an area as the law concerning

sedition, which may allow further control over the freedom of speech.

In *Kedar Nath Singh v. State of Bihar* (1962), the Supreme Court narrowly interpreted sedition to apply only to acts intended to incite violence or public disorder, not mere criticism of government.<sup>1210</sup> The Supreme Court's recent decision to reconsider the constitutional validity of sedition in *SG Vombatkere v. Union of India* (2021) underscores the ongoing controversy surrounding such provisions.<sup>1211</sup>

### SUGGESTIONS

Following an analysis of the research, it is clear there exist significant gaps that should be resolved in order for the BNS to perform properly and uphold the Constitution.

#### 1. Comprehensive Cybercrime Provisions

Right now, the BNS just doesn't keep up with the way cybercrime has exploded. It requires a significant revision—which introduces explicit guidelines transparent standards concerning emerging cyber offenses like cyberbullying, online harassment, phishing, ransom ware, and deep fake abuse. We're dealing with issues including AI-driven scams and crimes throughout the metaverse, yet the law scarcely addresses them.

The law should spell out that "property" covers data, too. This way, when someone steals or misuses information, you can actually charge them for it. Also, the language in the statute needs a refresh bring in digital terms so the law fits both the real world and the online one. Rules for crimes happening on digital platforms or inside virtual spaces shouldn't be an afterthought; they should be built in from the start.

<sup>1208</sup> *Drawbacks of Bharatiya Nyaya Sanhita, 2023*, DRISHTI JUDICIARY

<sup>1209</sup> *Shreya Singhal v. Union of India*, (2015) 5 S.C.C. 1.

<sup>1210</sup> *Kedar Nath Singh v. State of Bihar*, A.I.R. 1962 S.C. 955 (India).

<sup>1211</sup> *S.G. Vombatkere v. Union of India*, W.P. (C) No. 682 of 2021 (India).

### 1. Gender-Neutral Sexual Offence Provisions

If we want to stay true to the Constitution's promise of equality and acknowledge people's diverse gender identities, we need to change the BNS. Sexual offence laws should treat everyone the same, no matter their gender. Anyone regardless of gender can be a victim or a perpetrator. Making these laws gender-neutral closes the protection gap that opened up after Section 377 was deleted. It also shows real commitment to recognizing transgender rights, just like the law claims.

Parliament also needs to take a hard look at the marital rape exception. Right now, it ignores constitutional rights to bodily autonomy, dignity, and equality. Keeping this exception in place only reinforces gender discrimination and goes against our international human rights commitments.

### 2. Procedural Harmonization for Serious Offences

Lawmakers should introduce clear procedures for handling terrorism, organized crime, and other serious crimes. These rules must let investigators do their jobs well, but not at the cost of the accused's rights. Right now, the way BNS handles terrorism isn't in sync with the UAPA, and that creates confusion—sometimes even opens the door to abuse. There's another problem: too much unchecked power. When it comes to deciding whether to apply terrorism or organized crime charges, the law should build in real checks. Superintendents of Police shouldn't get to decide these things alone, without a judge's review. Judicial oversight keeps the process fair and stops decisions from becoming arbitrary.

### 3. Constitutional Safeguards

The current draft raises some serious constitutional issues. Lawmakers need to rewrite vague sections to add clear constitutional protections. Take Section 226 on suicide attempts this one clashes with the Mental Healthcare Act. That needs sorting out so the laws don't contradict each other. Any rules that touch on freedom of speech or expression have to fit with what the Supreme Court says is allowed under Article 19(2). Redraft those sections so they actually respect those boundaries.

### CONCLUSION

The Bharatiya Nyaya Sanhita, 2023 represents a daring effort to break from the colonial Indian Penal Code and set up a modern criminal law for India. On paper, the statute brings in some real changes community service as punishment, explicit legal recognition for transgender people, new sections for crimes like terrorism and organized crime, stronger protections for women and children, and updates for the digital age.

Yet, when you examine the details, the "transformation" looks a lot less dramatic. About 80% of the old IPC survives, mostly with surface-level tweaks. Claims of deep modernization fall flat; it feels more like repackaging than a true overhaul. Big problems remain. Key terms stay so vague they invite arbitrary policing. Cybercrime gets little attention. The law recognizes transgender people, but sexual offence sections still aren't gender-neutral. The marital rape exception remains untouched. And while community service is now an option, the law gives almost no direction on how to actually run such programs.

Some parts of the BNS also raise thorny constitutional issues. Definitions of "terrorism" and "organized crime" leave too much open to interpretation. There are clashes with other special laws. And there's a real risk of crackdowns on free speech. These gaps can't

just be fixed on paper; India needs massive investment in courts, police training, and tech especially outside the big cities if the law is going to work at all.

The way lawmakers pushed the BNS through drew fire for shutting out diverse voices. If we look at how other post-colonial countries have genuinely reformed their criminal laws, the lesson is clear: swapping one statute for another isn't enough. Without changes in how police, prosecutors, and judges actually work, legal reform stays skin-deep.

In the end, the BNS will stand or fall on the commitment of everyone involved—lawmakers, judges, police, lawyers, and ordinary people to keep pushing for a criminal justice system rooted in dignity, equality, and fairness. The real test is whether Parliament plugs the law's gaps, courts defend fundamental rights, and all sides keep up the pressure for reform.

This research finds that the Bharatiya Nyaya Sanhita is a meaningful but unfinished step toward decolonizing and modernizing Indian criminal law. It introduces some much-needed updates, but stops far short of the real transformation India's justice system needs. To truly serve its people in the 21st century, the country has to recognize these shortfalls, act on specific reforms, and stay committed to real change not just as a one-time fix, but as a continuing effort.

