

BNS: A New Dawn for Indian Criminal Law? - Analyzing the Shift in India's Legal Landscape

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Abstract

With the introduction of The Bharatiya Nyaya Sanhita 2023, which nullifies colonial past criminal laws, India has set off a transforming trip. This new legislation aims to harmonise with the fundamental principles of Indian society and efficiently tackle the difficult problems, therefore changing the legal scene. Along with the thorough changes that primarily target grave crimes like terrorism, organised crime, corruption, mob lynching, and mob lynching, the divisive sedition laws—which have often been used to stifle dissent and infringe civil liberties—are eliminated. Through this, these laws maintain the commitment to safeguarding democratic ideals and ensuring the objective and transparent execution of justice.

The new legislative framework improves the efficacy and efficiency of the justice system by using cutting-edge technologies. The law emphasizes several key points.

Keywords: The Bharatiya Nyaya Sanhita 2023, Indian Penal Code 1860, The Bharatiya Nagarik Suraksha Sanhita 2023, The Bharatiya Sakshya Adhinyam 2023 Indian criminal justice system, women and children, Terrorist Act, snatching, sedition, hit and run cases

INTRODUCTION

The criminal law sector in India significantly influences the lives of its citizens. This system has undergone significant reform with the implementation of three new statutes: the Bharatiya Nyaya Sanhita, 2023, the Bharatiya Nagarik Suraksha Sanhita, 2023, and the Bharatiya Sakshya Adhinyam, 2023. These legislation aim to supplant the imperial laws: The Indian Penal Code of 1860, the Code of Criminal Procedure of 1973, and the Indian Evidence Act of 1872. The landscape of crime and deviance has evolved significantly over the past century, causing existing regulations to struggle in meeting contemporary requirements. Recognising the necessity for a legislative framework that aligns with contemporary realities, legislators have undertaken substantial measures to modernise the criminal justice system.

The Bharatiya Nyaya Sanhita, 2023 (BNS), set to supplant the Indian Penal Code of 1860 (IPC), was reintroduced in the Lok Sabha on December 12, 2023, following the withdrawal of the first draft to integrate proposals from the Standing Committee.¹The revised Bill swiftly advanced through the legislative procedure, with the Lok Sabha approving it on December 20, 2023, and the Rajya Sabha

¹The Bharatiya Nyaya Sanhita; c2023. Available from: <https://prsindia.org/billtrack/the-bharatiya-nyaya-sanhita-2023>. [Accessed 18 August 2024].

subsequently endorsing it on December 21, 2023. On December 25, 2023, the three Bills received Presidential assent, marking a new chapter in India's criminal justice system.

The Bharatiya Nyaya Sanhita (BNS) 2023 was enacted to supplant the Indian Penal Code (IPC), with the objective of modernising and enhancing the legal framework for handling diverse offences. The BNS meticulously balances the necessity of preventing both over-criminalization and de-criminalization. It preserves fundamental offences against individuals and the State while modernising the law by eliminating potentially obsolete clauses like as Section 377, Section 124-A, and Section 309 of the IPC. The BNS significantly advances by acknowledging and tackling hit-and-run incidents under Section 106, imposing heightened penalties of up to 10 years, indicative of a gradual transformation in the legal framework.

BHARATIYA NYAYA SANHITA, 2023

The evolution of the Indian criminal justice system has been characterised by many obstacles and notable milestones. In primitive cultures during the early eras, formal criminal law was absent, and justice was generally administered by kings. The Muslim invasions introduced the implementation of Mohammedan criminal law in the region. Nevertheless, the most major adjustments occurred with the advent of the British, who implemented substantial enhancements to the system.

In 1834, the East India Company founded the Indian Law Commission with the objective of formulating a complete Penal Code. The panel was chaired by Thomas Babington Macaulay, a British imperialist and Member of Parliament.²The Indian Penal Code (IPC) was enacted on 6th October 1860 and became effective on 1st January 1862 following the draughting of the code and subsequent input. The Preamble of the IPC explicitly stated its objective to create a standardised criminal code for India, with its title underscoring its emphasis on the punishment of offences.

KEY CHANGES INTRODUCED IN THE BHARATIYA NYAYA SANHITA, 2023

1. Consolidation of provisions

- BNS has streamlined and consolidated the provisions under IPC, only containing 358 sections, compared to 511 sections under the IPC. This has been achieved by consolidating various provisions relating to the same offences, such as Section 317 of BNS consolidates all the provisions relating to stolen property under IPC, which were set out in Sections 410 to 414.
- BNS has consolidated similar provisions or provisions relating to similar offences in one place. Such as, all three inchoate offences, i.e., “attempt”, “abetment” and “conspiracy”, have been brought together under Chapter IV of the BNS. Earlier, “abetment” and “conspiracy” were covered from Section 109 to 120 and 120A & 120B in the IPC, and “attempt” was under Section 511 of IPC.

²Macaulay TB. A Penal Code Prepared by the Indian Law Commissioners and Published. Available from: <https://www.lawbookexchange.com/pages/books/28513/thomas-babington-macaulay/a-penal-code-prepared-by-the-indian-law-commissioners-and-published>; 2024 Aug.

2. Modernized Language and Definitions: BNS has removed remnants of archaic language³ or colonial references.⁴ BNS also uniformly uses the term/expression “child”⁵ in place of “minor” and “child under the age of eighteen years”, and “person with unsound mind” in place of “insane”, “lunatic”, and “idiot”.

3. Expanded Jurisdiction: Section 48 of the BNS has extended jurisdiction to criminalize abetment outside India, broadening the scope of legal enforcement.

4. Offences against property

- Definition of the offence of “theft” has been expanded to include theft of vehicle, theft from vehicle, theft of government property, idol, or icon from a place of worship.⁶
- Offence of “snatching” has been introduced under Section 304 of BNS. Theft will only amount to snatching if the theft is carried out in a sudden, quick or forcible manner.

5. Offences against women and children

- All the offences against women and children have been brought under Chapter V of the BNS, which is followed by the offences affecting human body in Chapter VI.
- Various offences against women have been made gender-neutral in relation to the perpetrator, i.e., all genders can be penalised for committing offences.⁷

6. Offences against human body

- The offence of attempt to commit suicide has been removed from the BNS. However, a new section has been added which criminalises the attempt to commit suicide to compel or restrain exercise of lawful power by a public servant.⁸
- A sub-category of culpable homicide has been introduced under Section 103 of the BNS, relating to mob-lynching. It criminalises and provides punishment for murder and/or grievous hurt by “group of five or more persons” based on victim’s “race, caste or community, sex, place of birth, language, personal belief or any other similar ground”.⁹

7. Organised crimes and terrorist acts

- New offences of “organised crime”¹⁰ and “petty organised crime”¹¹ have been introduced

³The Bharatiya Nyaya Sanhita; 2023. Sections 27, 28, 46 & 107; Indian Penal Code, 1860. Sections 89, 90, 108 & 305, 2024 Aug.

⁴The Bharatiya Nyaya Sanhita, 2023. Section 356: Defamation; Indian Penal Code, 1860, Section 499. The definition of Year and Month has been revised from the British Calendar to the Gregorian Calendar; Bharatiya Nyaya Sanhita; c2023, Section 2(20); Indian Penal Code, 1860, Section 49. [Accessed 18 August 2024].

⁵The Bharatiya Nyaya Sanhita; c2023. Section 2(3): child means any person below the age of eighteen years. [Accessed 18 August 2024].

⁶The Bharatiya Nyaya Sanhita; c2023. Section 305. [Accessed 18 August 2024].

⁷The Bharatiya Nyaya Sanhita, Section 69: Sexual intercourse by employing deceitful means; Section 74: Assault or use of criminal force to woman with intent to outrage her modesty; Section 76: Assault or use of criminal force to woman with intent to disrobe; Section 77: Voyeurism; Section 79: Word, gesture or act intended to insult modesty of a woman; c2023 [Accessed 18 August 2024].

⁸The Bharatiya Nyaya Sanhita; c2023. Section 226. [Accessed 18 August 2024].

⁹The Bharatiya Nyaya Sanhita; c2023. Section 103(2). [Accessed 18 August 2024].

¹⁰The Bharatiya Nyaya Sanhita; c2023. Section 111. [Accessed 18 August 2024].

¹¹The Bharatiya Nyaya Sanhita; c2023. Section 112. [Accessed 18 August 2024].

under the BNS. This is the first time “organised crime” has been recognised as an offence in a central legislation, which was so far regulated under state legislations such as Maharashtra Control of Organised Crime Act, 1999 and Gujarat Control of Terrorism and Organised Crime Act, 2015.

- Similarly, “terrorist act”¹² has been criminalised under the general criminal statute for the first time. “Terrorist act” has been criminalised under special statutes such as Unlawful Activities (Prevention) Act, 1967.

8. Offences against State: Section 124A of the IPC, which criminalised sedition, has been deleted. However, BNS has introduced a new offence in the same vein as sedition, namely, “acts endangering sovereignty, unity and integrity of India”.¹³

9. Offences against public tranquillity: Section 197(1)(d) of BNS criminalises the act of making or publishing false or misleading information which jeopardises the sovereignty, unity and integrity or security of India.

THE IDEA OF NYAYA AND COMMUNITY SERVICE

A particularly noteworthy innovation is the inclusion of community service as a form of punishment under Section 4¹⁴, a groundbreaking development in India's legal system. This new legal framework marks a significant departure from the traditional punitive model, shifting towards a justice system that prioritizes Nyaya, or fairness and equity, for all parties involved. The BNS exemplifies this shift by moving from a retributive approach to one that is reformative, where punishments are carefully balanced.

The BNS recognizes the need to reframe justice, placing greater emphasis on the rights and well-being of victims while also focusing on the rehabilitation of offenders. By introducing community service as a reformative measure, the BNS captures the true spirit of Nyaya, promoting a justice system that seeks to restore social harmony and ensure fair treatment for both victims and offenders. This evolution marks a profound and progressive step towards a more just and compassionate legal framework in India.

Section 53 of the Indian Penal Code (IPC) lists five types of punishments:

1. Death.
2. Imprisonment for life.
3. Imprisonment, which can be either rigorous or simple.
4. Forfeiture of property.
5. Fine.

¹²The Bharatiya Nyaya Sanhita, 2023, Section 113. [Accessed 18 August 2024].

¹³The Bharatiya Nyaya Sanhita; c2023, Section 152. [Accessed 18 August 2024].

¹⁴ The Bharatiya Nyaya Sanhita; c2023, Section 4—The punishments to which offenders are liable under the provisions of this Sanhita are—(a) Death; (b) Imprisonment for life; (c) Imprisonment, which is of two descriptions, namely— (1) Rigorous, that is, with hard labour; (2) Simple; (d) Forfeiture of property; (e) Fine; (f) Community Service. [Accessed 18 August 2024].

However, Section 4(f) of the Bharatiya Nyaya Sanhita (BNS) has introduced a sixth type of punishment-Community Service.¹⁵ This new form of punishment, aims to alleviate the overcrowding in jails by providing an alternative for minor offenses.

The BNS includes community service as a penalty for minor offenses such as failing to appear in response to a proclamation, attempting suicide, obstructing a public servant's lawful duties, petty theft (when the stolen property is returned), public misconduct while intoxicated, defamation, and similar acts.

Although the term "community service" is not explicitly defined in the BNS, it is clarified in the Explanation to Section 23 of the Bharatiya Nagarik Suraksha Sanhita (BNSS). According to this explanation, community service refers to work that a court may order a convict to perform as punishment, which benefits the community without providing any remuneration to the convict.

SEDITION

Chapter VII of the Bharatiya Nyaya Sanhita (BNS) introduces a pivotal change to the offence previously known as sedition under Section 124-A¹⁶ of the Indian Penal Code (IPC). Now redefined in Chapter VII of the BNS, which deals with offences against the State, the outdated and colonial-era term "sedition" has been replaced by a broader and more precise definition under Section 152 as "Act endangering sovereignty, unity and integrity of India".

Previously, section 124-A of the IPC penalized those who incited hatred, contempt, or disaffection against the government established by law in India. In contrast, the newly articulated section 152 of the BNS greatly expands the scope of this offence, "whoever, purposely or knowingly by words, either spoken or written, or by signs, or by visible representation, or by electronic communication or by use of financial mean, or otherwise, excites or attempts to excite secession or armed rebellion or subversive activities or endangers sovereignty or unity and integrity of India; or indulges in or commits any such act shall be punished with imprisonment for life or with imprisonment which may extend to seven years, and shall also be liable to fine".

SEXUAL INTERCOURSE BY DECEITFUL MEANS

The Bharatiya Nyaya Sanhita (BNS) establishes a distinct offence concerning sexual intercourse obtained through deceitful means, as detailed in Chapter V, Section 69.¹⁷ This provision imposes a penalty of up to ten years of imprisonment and a fine for individuals who engage in sexual intercourse

¹⁵Press Information Bureau. Press Release; c2023 Dec. [Accessed 18 August 2024].

¹⁶Indian Penal Code, 1860. Section 124A. Sedition—Whoever by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, the Government established by law in India, shall be punished with imprisonment for life, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine. [Accessed 18 August 2024].

¹⁷The Bharatiya Nyaya Sanhita, 2023. Section 69. Sexual intercourse by employing deceitful means, etc.—Whoever, by deceitful means or by making promise to marry to a woman without any intention of fulfilling the same, has sexual intercourse with her, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine. Explanation. — "deceitful means" shall include inducement for, or false promise of employment or promotion, or marrying by suppressing identity. [Accessed 18 August 2024].

with a woman under false pretences, such as making deceptive promises of marriage. This reform represents a significant shift from earlier legal interpretations, which treated such actions as part of rape. By explicitly separating this offence, the BNS emphasizes the critical element of deceit, acknowledging that a false promise of marriage is fundamentally different from other forms of sexual violence. This nuanced legal framework enhances the understanding of consent and accountability, providing greater protection for individuals affected by such deceitful conduct.

RECOGNITION OF HIT AND RUN CASES

Section 106(2)¹⁸ of the BNS addresses "death by negligence" in the context of hit-and-run incidents. This provision stipulates that if a driver causes death through reckless or negligent driving and subsequently fails to report the incident to law enforcement or a Magistrate while attempting to evade responsibility, they can face penalties of up to ten years of imprisonment and fines. This robust approach signifies a commitment to holding individuals accountable for their actions, aiming to deter reckless driving and ensure that victims and their families receive justice. The BNS's focus on accountability in traffic-related offences reflects a serious dedication to enhancing public safety and protecting the rights of those impacted by such tragic events.

MOB-LYNCHING

Section 103(2) of BNS is a new provision. There was no corresponding provision in IPC. The provision relates to mob lynching. It provides that when a group of five or more persons acting in concert commits murder on the ground of race, caste or community, sex, place of birth, language, personal belief or any other similar ground each member of such group shall be punished with death or with imprisonment for life and shall also be liable to fine.

ORGANISED CRIME AND PETTY ORGANISED CRIME

1. Organised Crime

- Organised crime and petty organised crime are newly introduced offences.
- Section 111 defines and punishes organised crime and Section 112 defines and punishes petty organised crime.

Section 111(1) provides that "Any continuing unlawful activity including kidnapping, robbery, vehicle theft, extortion, land grabbing, contract killing, economic offence, cyber-crimes, trafficking of persons, drugs, weapons or illicit goods or services, human trafficking for prostitution or ransom, by any person or a group of persons acting in concert, singly or jointly, either as a member of an organised crime syndicate or on behalf of such syndicate, by use of violence, threat of violence, intimidation, coercion, or by any other unlawful means to obtain direct or indirect material benefit including a financial benefit, shall constitute organised crime".

- **Organised crime syndicate:** Explanation (i) to Section 111(1) defines 'organised crime syndicate'. It means a group of two or more persons who, acting either singly or jointly, as

¹⁸The Bharatiya Nyaya Sanhita; c2023. Section 106. [Accessed 18 August 2024].

a syndicate or gang indulge in any continuing unlawful activity.

- **Continuing unlawful activity:** Explanation (ii) to Section 111(1) defines ‘continuing unlawful activity’. It means an activity prohibited by law which is a cognizable offence punishable with imprisonment of three years or more, undertaken by any person, either singly or jointly, as a member of an organised crime syndicate or on behalf of such syndicate in respect of which more than one charge-sheets have been filed before a competent Court within the preceding period of ten years and that Court has taken cognizance of such offence, and includes economic offence.
- **Economic offence:** Explanation (iii) to Section 111(1) defines ‘economic offence’. It includes criminal breach of trust, forgery, counterfeiting of currency-notes, bank-notes and Government stamps, hawala transaction, mass-marketing fraud or running any scheme to defraud several persons or doing any act in any manner with a view to defraud any bank or financial institution or any other institution or organisation for obtaining monetary benefits in any form.

Punishment for organised crime: Section 111(2) provides for organised crime. It can be categorized into following two cases:

(a) If the offence has resulted in the death: Section 111(2)(a) provides that if such offense has resulted in the death of any person, be punished with death or imprisonment for life, and shall also be liable to fine which shall not be less than ten lakh rupees.

(b) In any other case: Section 111(2)(b) provides that in any other case, be punished with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine which shall not be less than five lakh rupees.

Punishment for other aspects of organised crime

- **Section 111(3):** provides that whoever abets, attempts, conspires or knowingly facilitates the commission of an organised crime, or otherwise engages in any act preparatory to an organised crime, shall be punished with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine which shall not be less than five lakh rupees.
- **Section 111(4):** provides that any person who is a member of an organised crime syndicate shall be punished with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine which shall not be less than five lakh rupees.
- **Section 111(5):** provides that whoever, intentionally, harbours or conceals any person who has committed the offence of an organised crime shall be punished with imprisonment for a term which shall not be less than three years but which may extend to imprisonment for life, and shall also be liable to fine which shall not be less than five lakh rupees. This provision shall not apply to any case in which the harbour or concealment is by the spouse of the offender.
- **Section 111(6):** provides whoever possesses any property derived or obtained from the

commission of an organised crime or proceeds of any organised crime or which has been acquired through the organised crime, shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to imprisonment for life and shall also be liable to fine which shall not be less than two lakh rupees.

- **Section 111(7):** provides If any person on behalf of a member of an organised crime syndicate is, or at any time has been in possession of movable or immovable property which he cannot satisfactorily account for, shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to imprisonment for ten years and shall also be liable to fine which shall not be less than one lakh rupees.

2. Petty Organised Crime

- Section 112(1) provides that whoever, being a member of a group or gang, either singly or jointly, commits any act of theft, snatching, cheating, unauthorised selling of tickets, unauthorised betting or gambling, selling of public examination question papers, or any other similar criminal act is said to commit petty organised crime.
- **Explanation to Section 112(1):** provides that for the purposes of this Section 112(1) "theft" includes trick theft, theft from vehicle, dwelling house or business premises, cargo theft, pick pocketing, theft through card skimming, shoplifting and theft of Automated Teller Machine.
- **Punishment for petty organized crime -Section 112(2):** provides that whoever commits any petty organised crime shall be punished with imprisonment for a term which shall not be less than one year but which may extend to seven years and shall also be liable to fine.

SNATCHING

- Section 304(1) defines 'Snatching'. It provides that theft is snatching, in order to commit theft, the offender suddenly or quickly or forcibly seizes or secures or grabs or takes away from any person or from his possession any movable property.
- Section 304(2) provides that whoever commits snatching, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

TERRORIST ACT

Terrorist Act is a newly introduced offence. Section 113 defines and punishes terrorist act as whoever does any act with the intent to.

- Threaten or likely to threaten the unity, integrity, sovereignty, security, or economic security of India or
- With the intent to strike terror or likely to strike terror in the people or any section of the people in India or in any foreign country.

By using bombs, dynamite or other explosive substance or inflammable substance or firearms or

other lethal weapons or poisonous or noxious gases or other chemicals or by any other substance (whether biological, radioactive, nuclear or otherwise) of a hazardous nature or by any other means of whatever nature to cause or likely to cause.

1. Death of, or injury to, any person or persons; or.
2. Loss of, or damage to, or destruction of, property; or.
3. Disruption of any supplies or services essential to the life of the community in India or in any foreign country; or.
4. Damage to, the monetary stability of India by way of production or smuggling or circulation of counterfeit Indian paper currency, coin or of any other material; or.
5. Damage or destruction of any property in India or in a foreign country used or intended to be used for the defence of India or in connection with any other purposes of the Government of India, any State Government or any of their agencies; or.
6. Overawes by means of criminal force or the show of criminal force or attempts to do so or causes death of any public functionary or attempts to cause death of any public functionary; or.
7. Detains, kidnaps or abducts any person and threatening to kill or injure such person or does any other act in order to compel the Government of India, any State Government or the Government of a foreign country or an international or inter-governmental organisation or any other person to do or abstain from doing any act, commit a terrorist act.

Punishment for 'terrorist act'-Section 113(2) provides punishment for terrorist act. It can be categorized into following two cases.

1. If such offence has resulted in death: Section 113(2)(a): Provides that if such offence has resulted in the death of any person, be punished with death or imprisonment for life, and shall also be liable to fine.

2. In any other case: Section 113(2)(b): Provides that in any other case, be punished with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine.

CONCLUSION

The planned Bharatiya Nyaya Sanhita (BNS) is a significant departure from the Indian Penal Code (IPC), which dates back to the colonial era, and demonstrates how India's legal system has developed. The disparities between the two, shown by a comparison study, demonstrate how badly the criminal justice system needs a complete overhaul. The IPC is a relic of colonial law that is both harsh and hierarchical; it cannot handle the complicated crimes of today since it is a product of its day. Human rights, community-based programs, and restorative justice are at the centre of the BNS's transformational approach. The two codes differ significantly in their structure, content, and underlying ideas. While the requirements of the IPC might be complicated and unclear at times, the BNS places an emphasis on being relevant, easily accessible, and clear.

By adding new issues like cybercrime, organised crime, and economic offences, the BNS also

recognises the ever-changing nature of criminality. To ensure these reforms are successful, it is essential to implement them effectively, provide adequate financing, and maintain political will. In order to find problems and find solutions, the present criminal justice system has to be evaluated thoroughly. To make sure the BNS is successful and can adapt to new problems, it has to be evaluated and monitored regularly.

A giant leap forward for the world's biggest democracy has been achieved with the replacement of the Indian Penal Code (IPC) with the Bharatiya Nyaya Sanhita (BNS). It represents a system of law that listens to its people, puts victims' interests first, and protects the rights of those accused, all in the sake of creating a more just and equal society. In the end, the BNS might completely transform Indian criminal justice by creating a more fair and effective system of law that takes into account both the current state of affairs and the successes of the past.