

The Bharatiya Nyaya Sanhita, 2023 in the Age of Artificial Intelligence: Transforming Criminal Law and Legal Practice in India

Manjinder Singh¹, Dr. Arpana Bansal²

¹Research Scholar, Guru Kashi University, Talwandi Sabo

²Associate Professor, Guru Kashi University, Talwandi Sabo

Abstract:

A paradigm shift in the treatment of complicated societal issues, especially in the domains of adjudication and punishment, has occurred with the widespread use of artificial intelligence (AI) in many facets of government. This article discusses the framework of India's criminal justice system and provides a critical analysis of its current implementations, future enhancements, and the constitutional, ethical, and legal challenges it poses. The adoption process in India has been slow but steady, thanks to major improvements in areas such as law enforcement, forensic science, data processing, and court adjudication. Important government agencies have stated their belief in the viability of AI-driven governance approaches. Projects like integrated criminal databases and forensic technology assisted by artificial intelligence have made their deployment practicable. Much of this research is devoted to analyzing how the Bharatiya Nyaya Sanhita (BNS), 2023, the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, and the Bharatiya Sakshya Adhiniyam (BSA), 2023, incorporate AI technology into India's revised criminal code. A modernization drive is indicated by these statutes, which offer legal backing for the incorporation of AI into procedural frameworks. The research uses a doctrinal approach to examine how well AI tools adhere to the procedural guarantees, evidential norms, and fundamental rights codified in these new codes. An in-depth and critical examination of AI's role in India's criminal justice system is presented in this article. By striking a balance between the need to protect constitutional values and the promise of technological advancement, it makes a significant contribution to academic research in this crucial area.

Keywords: Justice, Modernization, Rehabilitation, Criminal, Artificial Intelligence, Victims.

INTRODUCTION

There is always some "balancing of interests" in a legislation, whether it's between people or between people and society. According to India's legal tradition, "crime" is a "wrong against society" since it threatens the safety and security of a community.¹ The identification, prosecution, conviction, and punishment of the offender serve society well. But the Constitution gives people a lot of protections, so the state can't do anything during prosecution that would violate the offender's fundamental rights. Through the provision of fundamental rights, a "fair balance between societal interests and individual rights" must be achieved. No statute or provision of a statute can conflict with the fundamental concepts of "equity, justice, and reasonableness," which are a part of our system's constitutional foundation.

Integrating "Artificial Intelligence" into India's criminal justice system requires serious deliberation. To avoid bias, discrimination, and arbitrary decisions, it must adhere to the fundamental rights and principles guaranteed by the Constitution and statutes (e.g., BNS, BNSS, and BSA) while upholding the ideals of equality, justice, transparency, and the presumption of innocent. Supporting national security are these fundamental ideas. Consequently, we need to educate ourselves on technology, make it accessible to the masses, raise awareness, and teach people digital literacy so that we can cut down on human labor while getting the most out of it so that we can maximize the benefits and minimize the challenges of integrating technology into legal structures.

The judicial system is only one of several fields that have discovered uses for artificial intelligence. We need to revamp the existing legal system so that efficiency and justice can live side by side.

MODERNIZING INDIA'S CRIMINAL JUSTICE SYSTEM

An alternative to the Indian Penal legislation was proposed in an attempt to strengthen India's criminal legislation and sanctions. Community service could be a punishment for small infractions. Crimes committed against women and children, as well as the state, have received more attention. Gender is no longer a factor in many criminal prosecutions. The bill's additional offences for terrorist activities and organized crimes should deter criminals and bring attention to the problem of organized crime and terrorist activity. Any action that endangers the independence, unity, or integrity of India is now considered a crime, along with armed revolt, subversion, and separatism. The penalties and fines for a number of crimes have recently increased.

Because both society and crime are ever-changing, new criminal laws are necessary. Conventional legal systems may become outdated when new kinds of criminal behavior emerge as a result of rapid changes in societal mores, technology capacities, and individual behavior. An in-depth analysis of the rationale and significance of recent criminal legislation can be found here:

- **Adaptation to Modern Challenges:** To combat modern problems like cyberbullying, IP infringement, cybercrime, and identity theft, new criminal laws are required. In order to investigate, prosecute, and discourage such crimes that take use of technological advances, certain legal frameworks are necessary.
- **Enhanced Public Safety:** Laws have evolved to priorities public safety by severely punishing risky activities. The laws that aim to combat violent crime, organized crime, and terrorism are always being amended to make them more effective in reducing danger and protecting vulnerable populations.
- **Protection of Individual Rights:** Modern criminal laws aim to protect fundamental rights and freedoms by ensuring fair treatment for all parties and due process. Included in these updates are new protections for individuals' privacy, more equitable processes, and the right to legal representation for everybody.
- **Support for Victims:** The victim support provisions of many new legislations guarantee that victims will get the help, recompense, and protection they need throughout the legal proceedings. Two ways to accomplish this goal would be to make it easier for victims to participate in trials and to improve the quality of assistance they receive from the justice system.
- **Improved Accountability:** Emphasizes transparency, documentation, and procedural safeguards to prevent misuse of power.
- **Victim-Centric Approach:** Enhances protection, participation, and support for victims within the legal process.

- **Recognition of Digital Evidence:** Ensures that digital and electronic records are legitimate, keeping up with crimes that are driven by technology.

Crimes against property, persons, public health, public order, defamation, and the state are all covered by India's primary criminal code, the Indian Penal Code 1860. The long-standing Indian Penal Code (IPC) has undergone multiple revisions throughout the years to incorporate new offences, alter sentence amounts, and clarify previous offences. Food adulteration, crimes against women, and the death sentence are only a few of the areas where the IPC has been suggested for revision in several studies by the Law Commission. While the Indian Penal Code (IPC) of 1860 has 511 sections, the proposed Bharatiya Nyaya Sanhita Bill 2023 has 358 sections, which will drastically alter the criminal justice delivery environment in India. In the Lok Sabha on August 11, 2023, Minister of Home Affairs Amit Shah presented the Bharatiya Nyaya Sanhita Bill. Along with the introduction of the Bharatiya Nyaya (Second) Sanhita Bill, 2023 in the Lok Sabha, the BNS Bill was withdrawn on December 12, 2023. The Bharatiya Nyaya (Second) Sanhita Bill, 2023 was approved in the Lok Sabha on December 20 and in the Rajya Sabha on December 21. In addition, on December 25, 2023, President Droupadi Murmu of India gave her approval to the Bharatiya Nyaya (Second) Sanhita Bill, 2023.

Thru vengeance and punishments, the IPC sought justice. At BNS, we prioritise victim-centeredness, restorative justice, and rehabilitation. The British closely watched the development of IPC and ideologically supported it. Made to adapt to the dynamic legal landscape of contemporary India.

CHRONOLOGY FROM THE BHARATIYA NYAYA SANHITA BILL, 2023 TO BHARATIYA NYAYA SANHITA (NO. 45 OF 2023)

- On August 11, 2023, the Hon'ble Minister of Home Affairs, Shri Amit Shah, introduced the Bharatiya Nyaya Sanhita Bill, 2023, in the Lok Sabha.
- On December 12th, 2023, the Bharatiya Nyaya Sanhita Bill, 2023 was officially shelved.
- On December 19, 2023, the Bharatiya Nyaya (Second) Sanhita Bill, 2023, which incorporates the relevant amendments, was introduced into Lok Sabha.
- In 2023, on January 20, the Bharatiya Nyaya (Second) Sanhita Bill was approved by the Lok Sabha.
- Rajya Sabha members voted to pass the Bharatiya Nyaya (Second) Sanhita Bill, 21123 on December 21, 2023.
- Bharatiya Nyaya (Second) Sanhita Bill, 2023 was assented to by the President of India on December 25, 2023.

Changes Introduced By BNS, 2023

In 2023, the Bharatiya Nyaya Sanhita (BNS) will supersede the Indian Penal Code (IPC) of 1860, which dates back to the colonial era. It is a radical overhaul of India's criminal justice system. This historic law eliminates antiquated colonial allusions and updates the framework by consolidating 511 sections of the Indian Penal Code into 358 sections of the Bengal National Summarium (BNS).

1. Consolidation of Provisions:

- Sections in the Indian Penal Code have been reduced from 511 to 358 as a result of BNS's simplification and consolidation of laws.

- Previously spread among Sections 410 to 414, Section 317 of BNS now consolidates the laws pertaining to stolen property under IPC.
- Under Chapter IV of BNS, the three incipient offences - "attempt," "abetment," and "conspiracy" - have been consolidated.
- In the past, the terms "abetment" and "conspiracy" were dealt with in Sections 109-120 and 120A & 120B of the Indian Penal Code, whereas "attempt" was dealt with in Section 511.

2. Modernized Language and Definitions:

- BNS has eliminated any traces of outdated language and allusions to colonialism.
- substitutes "child" for "minor" and "child under the age of eighteen years" consistently.
- Term "person with unsound mind" has been used in place of outmoded ones such as "insane," "lunatic," and "idiot."

3. Expanded Jurisdiction:

- The criminalisation of abetment outside of India is now under the purview of Section 48 of the BNS.
- Extends the territory where legal enforcement can be administered.

4. Offences Against Property:

- The term "theft" now encompasses not only the theft of an item from a person's possession, but also the theft of a vehicle, government property, and sacred objects from a house of worship.
- Under Section 304 of the BNS, a new crime known as "snatching" was established.
- Unless the act is swift, violent, or unexpected, it is not considered stealing.

5. Offences Against Women and Children:

- Chapter V of the BNS encompasses all crimes perpetrated against children and women.
- Offences pertaining to the human body are discussed in Chapter VI, following Chapter V.
- In terms of the offender, gender is no longer a factor in a number of crimes committed against women.
- Offenders of any gender can now face penalties for these crimes.

6. Offences Against Human Body:

- BNS no longer includes the offence of attempting suicide.
- An attempt to commit suicide in order to force or restrict the exercise of authorised power by a public worker is now criminalised, according to a newly introduced clause.
- Mob-lynching is a subcategory of culpable homicide that was introduced under Section 103.
- It is considered criminal when a "group of five or more persons" commits murder or serious bodily harm to a victim because of their race, caste, community, sex, place of birth, language, personal beliefs, or similar factors.

EMERGING LEGAL FRAMEWORK FOR AI-GENERATED CONTENT IN INDIA: THE ROLE OF THE BHARATIYA NYAYA SANHITA, 2023

In the past, India dealt with the problem of AI-generated content by using the Information Technology Act of 2000 and the Indian Penal Code of 1860, which were broad provisions. Sections 66C, 66D, 66E, 67, and 67A of the IT Act dealt with topics such as identity theft, cheating by personation, privacy violations,

and obscene and sexually explicit material, respectively. Although courts might use them in cases of deepfake involving non-consensual content or impersonation, the rules were not made to handle the intricacies of synthetic media, therefore there were a lot of issues with interpretation and inconsistent enforcement.

The Bharatiya Nyaya Sanhita, 2023, which was revised significantly, was implemented in July 2024. Several articles of the BNS now indirectly apply to offences involving AI. Regarding deepfake-enabled fraud, Section 318 addresses cheating by personation. Forgery of electronic records, including altered synthetic material, is addressed under Section 336. While Section 353 addresses public mischief thru misleading information, Section 356 deals with slander. A large-scale disinformation campaign may be subject to Section 111's rules on organised crime, while non-consensual intimate deepfakes can be addressed by the obscenity/sexual offence laws.

Unauthorized use of personal or biometric data in training AI models for deepfakes is further regulated under the Digital Personal Data Protection Act, 2023. It establishes responsibility for unlawful data processing, albeit its primary purpose is data protection.

The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2026, which were announced on 10 February 2026 (G.S.R. 120(E)) and will be in force from 20 February 2026, are the most recent changes. The term "Synthetically Generated Information (SGI)" is first used in these regulations; it refers to any kind of media that is either visually or aurally manipulated or produced in a way that makes it seem like it came from a true source. They promote transparent labelling thru the use of watermarks, audio disclaimers, and metadata; they demand more thorough screening of intermediates, particularly Significant Social Media intermediates; and they speed up the removal of illegal SGI, including non-consensual deepfakes, sometimes within two to three hours. In the event that compliance is not maintained, the safeguards provided by Section 79 of the IT Act may be forfeited.

The Bharatiya Sakshya Adhiniyam, 2023 adds another layer of complexity by posing new concerns regarding the reliability and acceptance of evidence produced by artificial intelligence.

Transparency and platform accountability are enhanced by these efforts, which show a greater knowledge of regulations. Nevertheless, they mostly address formalities and fail to address the fundamental issue of determining personal criminal responsibility.

NEW OFFENCES UNDER BNS

Sexual Intercourse on false pretext of marriage

If you promise to marry a woman or mislead her, you could face a fine and a 10-year jail term, according to Clause 69 of the BNS. Such sexual acts do not constitute legal rape. The law has not adequately punished sexual encounters that do not occur within a marriage, particularly those that involve women. As seen in recent cases, fraudulent marriage vows frequently lead to criminal indictments. Marriage fraud is still a big problem, even if dishonest sexual behavior is becoming a crime. Always keep in mind that fraudulent permission rape has been found in court before. This term criminalizes consenting sexual activities outside of marriage, according to critics, who argue that it overreaches the crime of rape.

Mob Lynching

The social order and legal system in India have been endangered by mob lynchings in the past few years. According to news reports, over 100 people have been killed in acts of mob violence since 2015. Statistics on mob lynchings are suspect, as the Union Minister of State for Home Affairs conceded in Lok Sabha. An organized murder by five or more persons motivated by racial, ethnic, religious, gender, national origin,

language, or other characteristics is punishable by death or life in prison plus a fine under Clause 103(2) of BNS.

Revival of Section 303

In the case of *Mithu v. State of Punjab*, the Indian Penal Code, 1860, Section 303 was deemed illegal by the Supreme Court of India. Murder convictions now frequently include life sentences, according to a new statute that provides an alternative punishment under article 104. Incorporating the concept of life imprisonment expands the scope to encompass an individual's entire natural life. The accused were discouraged from committing crimes after the punishment was reinstated.

Hit and Run

To add insult to injury, Clause 106(2) of the new law makes it a second crime to murder another person in an accident that does not amount to culpable homicide and then to flee the scene of the crime without reporting it. Ten years in jail and a fine equal to double that amount is the maximum penalty for this sort of crime. This crime is significant because it highlights the growing problem of traffic accidents.

Organized crime

According to BNS (2023), there are various unlawful activities that comprise organized crime. Motor vehicle theft, abduction, extortion, land grabs, contract murders, economic crimes, cybercrimes, and unlawful goods and services, as well as people, narcotics, and firearms, fall under this category. Prostitution, ransom, and any other form of people trafficking is considered an organized crime. Money, threats, intimidation, coercion, or force can get criminals what they want in this situation. A wide-ranging definition of a "economic offence" is provided. Death, life in prison without the possibility of parole, and a fine of ten million rupees are the penalties for organized crime. A fine of up to five lakh rupees and a prison term of at least five years, with the possibility of a life sentence, are the penalties for all other cases.

Petty Organized Crime

Bharatiya Nyaya Sanhita (BNS) acts against small-scale organized crime. Even if they do not fall under the umbrella of terrorism or major organized crime, any crimes that endanger public safety and order fall under this category. The BNS provides clear definitions of several offences in order to counteract instances of theft, snatching, cheating, selling public exam question papers, unlawful betting or gambling, and sales of tickets without authorization. To reduce their prevalence and societal effect, the BNS intends to take legal action against these practices. Depending on the seriousness of the offence, the BNS imposes fines and jail sentence for minor organized crime.

Terrorist Act

An act of terrorism is defined in Article 113(1) as one that threatens the safety of citizens, dismantles the current order, or erodes public faith in government. Biological or chemical agents, explosives, weapons, or a combination of the two can be used in terrorist acts. Included in this group are offences such as plane seizure and service interruption, as well as business theft and enslavement as defined in Section 2(g) of the Unlawful Crimes (Prevention) Act, 1967. The maximum penalty for terrorism is death or a life term without the possibility of parole. Conversely, sentences ranging from five years to life in prison without the possibility of parole are indeed hypothetical.

Acts endangering sovereignty unity and integrity of India

The BNS does away with the anti-dissent and anti-free expression charge of sedition, which has been there since colonial times. According to the scenario, "acts endangering sovereignty, unity and integrity of India" are the main points. A person may be sentenced to seven years in jail under the new law if they

incite secession, armed rebellion, subversive activities, or separatism, or if they endanger India's unity, sovereignty, or integrity.

CONCLUSION

In conclusion, a legislative framework is necessary to improve many areas, including sentencing and crime prevention. A more efficient and equitable process is promised by incorporating AI into the investigation, trial, judgement, and sentencing phases. To help build excellent law, technology can be used for BNS, BNSS, and BSA. Although there are clear benefits, such as easier accessibility, we will examine the implementation discrepancies and ethical problems. To make sure that AI helps build a criminal justice system that is fair, transparent, and focused on citizens in India, we need a balanced strategy that incorporates tech advancements with constitutional principles and ethical norms.

The criminal justice system in India could benefit much from artificial intelligence (AI), but only if a thorough and specialized regulatory structure is put in place to control its creation, implementation, and monitoring. The parameters, restrictions, and systems for holding AI-assisted decision-makers accountable need to be laid forth in such a framework. It is imperative that responsible authorities and judicial officers continue to exercise human oversight at all crucial phases of the criminal process, including investigation, prosecution, adjudication, and punishment.

To avoid the exploitation of personal data and the safeguarding of sensitive information, strong data protection measures should be put in place. To ensure that vulnerable populations are not impacted by biased outcomes, it is crucial that AI systems undergo regular independent audits to evaluate their accuracy, reliability, and possible biases. Equality, justice, due process, and the preservation of basic rights should form the basis of any rights-based approach to the integration of AI into the criminal judicial system. Another way to improve transparency and confidence in government is to form oversight committees that include professionals from different fields, such as law, technology, ethics, and civil society.

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