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## **REFORMING CRIMINAL JUSTICE IN INDIA: A STUDY ON THE SOCIETAL AND PROFESSIONAL IMPACT OF BNS**

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### **ABSTRACT**

The evolution of criminal law in India reflects a gradual and layered transformation shaped by history, governance, and changing societal needs. From its early foundations in religion and morality to its modern form as a structured legal system grounded in constitutional values, criminal law has continuously adapted to the realities of each era. This study examines that transformation across distinct historical phases ancient, medieval, colonial, post-independence, and contemporary reforms highlighting how each period contributed to the present framework.

The research further explores the constitutional, statutory, and jurisprudential foundations that define the functioning of criminal justice in India today. It analyses how fundamental rights, legislative structures, and judicial interpretations interact to balance state authority with individual liberty. At the same time, it critically evaluates the gap between legal principles and their actual implementation.

In addition, the study engages with key theoretical justifications of criminal law retributive, deterrent, preventive, reformative, and restorative and connects them with doctrinal principles such as legality, presumption of innocence, and proportionality. By linking these ideas with recent legislative developments, particularly the Bharatiya Nyaya Sanhita, the research raises important questions about the direction of criminal law reforms in India. The central focus remains on whether these changes represent a meaningful shift in philosophy or merely a structural reorganization of existing laws.

## **INTRODUCTION**

Criminal law is often seen simply as a set of rules that define offences and prescribe punishments. However, its role in society is far more complex. It represents the most direct expression of state power, as it allows the state to restrict individual liberty in the name of maintaining order and justice. Because of this, criminal law must constantly strike a balance between authority and accountability, punishment and fairness, control and rights.

In India, this balance has not developed overnight. The present criminal justice system is the result of a long and continuous process shaped by different historical influences. Ancient legal systems were closely tied to religion and social hierarchy, where moral duties guided legal norms. The medieval period introduced new legal traditions, creating a system where multiple laws coexisted. The colonial era marked a turning point by introducing codified and uniform laws, many of which continue to exist even today. After independence, the focus shifted towards constitutional values, particularly the protection of fundamental rights and the idea of fairness in legal processes.

Despite these developments, the criminal justice system continues to face serious challenges. Delays in trials, misuse of power, undertrial detention, and inconsistencies in enforcement raise important concerns about the effectiveness of the system. This makes it necessary not only to study laws as they are written but also to question how they function in practice.

This research is based on that broader understanding. It does not limit itself to describing legal provisions but attempts to examine the deeper foundations of criminal law. It looks at three key aspects: historical evolution, structural foundations, and theoretical justifications. Together, these dimensions provide a comprehensive understanding of how criminal law operates and why it takes its present form.

The introduction of new criminal laws, particularly the Bharatiya Nyaya Sanhita, has renewed discussions on reform. While these changes are often presented as modernization efforts, it is important to examine whether they truly address existing problems or simply replace old frameworks without substantial change. This study, therefore, critically evaluates these developments by linking them with established legal theories and doctrines.

The aim is not to provide definite answers but to raise meaningful questions. By doing so, the research seeks to contribute to a more thoughtful and critical understanding of criminal law in India.

## **2.1. HISTORICAL EVOLUTION OF CRIMINAL LAW FRAMEWORK**

The development of criminal law in India is the result of a long historical journey shaped by different civilizations, rulers, and legal philosophies. It did not emerge as a complete and structured system at once but gradually evolved over centuries. Each period contributed something unique, whether it was the moral foundation of ancient laws, the administrative discipline of medieval rulers, the codification brought by the British, or the rights-based reforms after independence. Today's criminal justice system is, therefore, a combination of all these influences.

Understanding this evolution is important for anyone studying law because it explains why certain legal principles exist and how they have changed over time. It also helps in understanding the shift from a system focused on punishment and control to one that aims to ensure justice, fairness, and protection of individual rights. This chapter discusses the historical evolution of criminal laws in India through different periods, including ancient, medieval, colonial, post-independence, and modern reforms.

### **2.1.1. ANCIENT PERIOD**

In ancient India, criminal law was not separated from religion or morality. Instead, it was deeply rooted in religious teachings and social customs. The rules governing crimes and punishments were mainly derived from texts such as the Manusmriti and the Arthashastra. These texts served as guides for rulers and society in maintaining order. The concept of dharma was central during this period. It referred to the duty of individuals to act according to moral and social norms. Any violation of these norms was considered a wrongdoing and attracted punishment. The idea of danda represented the authority of the king to punish offenders. Punishment was seen as necessary to maintain discipline and prevent disorder in society.

One important aspect of ancient criminal law was that it was not equal for all individuals. The nature and severity of punishment often depended on caste, gender, and social status. For example, a person belonging to a higher caste might receive a lighter punishment compared to

someone from a lower caste for the same offence.

This reflects the hierarchical structure of society at that time.

The contributions of Kautilya are particularly significant. In his work Arthashastra, he provided detailed guidelines on administration, governance, and justice. He emphasized the importance of strict enforcement of law and believed that fear of punishment was necessary to prevent crime. Although the system lacked uniformity and procedural safeguards, it laid the groundwork for the concept of state-administered justice.

### **2.1.2. MEDIEVAL PERIOD**

The medieval period introduced a new dimension to criminal law in India with the arrival of Islamic rule. During the Delhi Sultanate and Mughal Empire, the legal system was influenced by Islamic principles, particularly Sharia law. At the same time, local customs and Hindu practices continued to exist, leading to a mixed legal system.

In this period, crimes were classified into three main categories. Hudud offences were those for which punishments were fixed under religious law, such as theft or adultery. Qisas referred to offences where retaliation was allowed, like in cases of murder. Tazir offences were those where the judge had the discretion to decide the punishment. The administration of justice was carried out by qazis, who interpreted the law and delivered judgments. However, the system was not uniform across the country. Different regions followed different practices, and rulers had considerable influence over the administration of justice.

Rulers such as Alauddin Khilji played a major role in maintaining law and order. He introduced strict regulations to control markets, prevent corruption, and ensure discipline. Despite these efforts, the system remained diverse and lacked a unified structure. This period is often described as a phase of legal coexistence, where different legal traditions operated together. While Islamic law brought some structure, it did not completely replace existing customs, resulting in a complex legal framework.

### **2.1.3. BRITISH PERIOD**

The British colonial period brought the most significant changes to criminal law in India. For the first time, a systematic attempt was made to codify laws and create a uniform legal system

applicable across the country. This was mainly done to ensure efficient administration and control over the population.

The process began with reforms introduced by Warren Hastings, who tried to organize the judicial system. However, the real transformation took place with the establishment of the First Law Commission in 1834 under Lord Thomas Babington Macaulay. The most important outcome of this effort was the enactment of the Indian Penal Code, 1860. This code provided a clear definition of offences and prescribed punishments for each crime. It covered a wide range of offences, including crimes against the body, property, and the state. The IPC was drafted in a simple and clear language, making it accessible and easy to understand.

Along with the IPC, other important laws were introduced, such as the Indian Evidence Act, 1872 and the Code of Criminal Procedure, 1898. These laws established rules for evidence and procedures for investigation and trial, completing the structure of the criminal justice system. Although these laws brought uniformity and clarity, they were not free from criticism. Many provisions were designed to serve colonial interests and suppress dissent. For example, laws related to sedition were often used to control political opposition. Despite these shortcomings, the colonial period laid the foundation for the modern legal system in India.

#### **2.1.4. POST INDEPENDENCE**

After independence in 1947, India retained most of the existing legal framework but gradually modified it to reflect democratic values. The adoption of the Constitution of India in 1950 marked a major turning point. The Constitution introduced fundamental rights, such as the right to equality and the right to life and personal liberty. These rights had a direct impact on criminal law, ensuring that laws and procedures were fair and just.

One of the major reforms during this period was the enactment of the Code of Criminal Procedure, 1973, which replaced the earlier procedural law. It introduced several safeguards to protect the rights of the accused and ensure fair trials. New laws were also introduced to deal with emerging social issues. For example, the Narcotic Drugs and Psychotropic Substances Act, 1985 addressed drug-related offences, while the Prevention of Corruption Act, 1988 aimed to tackle corruption in public offices.

The judiciary played an important role during this period by interpreting laws in a progressive

manner and expanding the scope of fundamental rights. This helped in making the criminal justice system more balanced and fair.

### **2.1.5. MODERN DEVELOPMENT AND SOCIAL REFORMS**

In recent decades, there has been a growing demand for reforms in criminal law to address changing social conditions. Several amendments have been made to existing laws to improve their effectiveness. The Criminal Law (Amendment) Act, 2013 introduced stricter provisions for sexual offences and aimed to provide better protection to women. Similarly, the Juvenile Justice (Care and Protection of Children) Act, 2015 brought changes in the treatment of juvenile offenders.

There has also been a shift towards a more reformatory approach to justice. Instead of focusing only on punishment, the system now emphasizes rehabilitation and reintegration of offenders into society. This reflects a more humane approach to criminal law.

### **2.1.6. THE NEW ERA OF CRIMINAL LAWS**

In recent years, India has undertaken major reforms to modernize its criminal law system. The introduction of the Bharatiya Nyaya Sanhita, 2023, the Bharatiya Nagarik Suraksha Sanhita, 2023, and the Bharatiya Sakshya Adhinyam, 2023 marks a significant step in this direction.

These new laws aim to remove outdated provisions, simplify legal language, and address modern challenges such as cybercrime and organized crime. They also focus on improving the efficiency of the justice system and making it more accessible to the public.

## **2.2 CONSTITUTIONAL, STATUTORY AND JURISPRUDENTIAL FOUNDATIONS OF CRIMINAL JUSTICE IN INDIA**

The criminal justice system in India is not merely a collection of penal statutes; it is a constitutionally controlled structure shaped continuously through judicial interpretation. Its foundations can be understood through three interlinked dimensions—constitutional safeguards, statutory framework, and jurisprudential evolution. These together determine not only how crime is punished but how justice itself is defined.

### **2.2.1. CONSTITUTIONAL FOUNDATIONS**

The Constitution operates as both a source of power and a limitation on that power. Criminal

law, being the most coercive arm of the state, is therefore subjected to the highest level of constitutional scrutiny.

#### (1) Article 21: Due Process and Fair Procedure

A turning point in Indian criminal jurisprudence came with *Maneka Gandhi v. Union of India*. The Supreme Court held that: “Procedure established by law must be right, just and fair, and not arbitrary, fanciful or oppressive.”

It was held that, Article 21 is not limited to procedural legality; it incorporates substantive due process. This judgment transformed criminal justice by ensuring that arrests, detention, and trials must meet standards of fairness. It laid the groundwork for later rights such as fair trial and speedy trial.

#### (2) Right to Speedy Trial

In *Hussainara Khatoon v. State of Bihar*, the Court addressed the plight of undertrial prisoners languishing in jails. “The right to speedy trial is an essential ingredient of reasonable, fair and just procedure.” It was held by the court that any delay in trial violates Article 21. This case exposed systemic inefficiencies and forced recognition that justice delayed is effectively justice denied.

#### (3).Protection Against Self-Incrimination

The scope of Article 20(3) was clarified in *Nandini Satpathy v. P.L. Dani*: “The right against self-incrimination extends to the stage of police interrogation.” It was held by the court that the accused persons cannot be compelled to answer questions that may incriminate them. This case strengthened procedural fairness during investigation, not just trial.

#### (4) Equality Before Law

In *E.P. Royappa v. State of Tamil Nadu*, the Court expanded Article 14: “Equality is antithetic to arbitrariness.” It was held that any arbitrary state action violates equality. Applied to criminal justice, this principle challenges arbitrary arrests, selective prosecution, and discriminatory enforcement.

#### (5) Custodial Safeguards

A landmark intervention came in *D.K. Basu v. State of West Bengal*: “Custodial violence is a naked violation of human dignity.” The Court laid down mandatory guidelines for arrest and

detention. Despite these guidelines, custodial abuse persists—raising questions about enforcement rather than absence of law.

### **2.2.2. STATUTORY FOUNDATIONS**

Statutory law operationalizes constitutional guarantees. However, its historical roots in colonial governance complicate its role.

#### **(1) Penal Law and Criminal Liability**

The traditional framework under the Indian Penal Code has now been replaced by the Bharatiya Nyaya Sanhita, 2023. While presented as a reform, the real issue is whether it changes the philosophy of criminalization or merely restructures existing provisions.

The courts have repeatedly emphasized that penal statutes must be interpreted strictly. In *Kartar Singh v. State of Punjab*: “Stringent laws must be narrowly construed to prevent misuse.” It was held that harsh penal provisions require strict judicial scrutiny. This becomes particularly relevant in the context of new criminal laws dealing with national security and organized crime.

#### **(2) Procedural Safeguards**

The Code of Criminal Procedure ensures fair investigation and trial. However, its effectiveness depends on implementation.

In *Joginder Kumar v. State of Uttar Pradesh*, the Court held: “No arrest can be made merely because it is lawful for the police officer to do so.” It was held that arrest must be justified, not routine. This ruling directly challenges the misuse of arrest powers, which remains a persistent issue.

#### **(3) Bail and Personal Liberty**

The principle governing bail was articulated in *State of Rajasthan v. Balchand*: “Bail is the rule and jail is the exception.” It was held that pre-trial detention should not be the norm.

Yet, in practice, undertrial populations remain high, indicating a disconnect between legal principle and ground reality.

#### **(4) Evidentiary Standards**

The criminal justice system rests on the principle of proof beyond reasonable doubt. In *Sharad Birdhichand Sarda v. State of Maharashtra*, the Court laid down: “Suspicion, however strong, cannot take the place of proof.”

It was held by the court that the conviction must be based on conclusive evidence. This principle protects against wrongful convictions but also creates challenges in prosecuting complex crimes.

### **2.2.3. JURISPRUDENTIAL FOUNDATIONS**

Judicial interpretation has been the most dynamic force in shaping criminal justice in India. Courts have not only interpreted laws but have actively expanded rights.

#### (1) Fair Trial as a Fundamental Right

In *Zahira Habibullah Sheikh v. State of Gujarat*, the Court observed: “A fair trial is the heart of criminal jurisprudence.”

The court held that justice must not only be done but must be seen to be done. This case emphasized witness protection and impartial proceedings.

#### (2) Compensation for State Wrongdoing

In *Nilabati Behera v. State of Orissa*: “Compensation is an appropriate remedy for violation of fundamental rights.”

The court held that the state is liable for custodial deaths and violations. This introduced accountability into criminal justice administration.

#### (3) Death Penalty Jurisprudence

The constitutional validity of capital punishment was upheld in *Bachan Singh v. State of Punjab*: “Death penalty should be imposed only in the rarest of rare cases.” It was held that sentencing must balance aggravating and mitigating factors. This doctrine reflects the tension between retributive and reformatory justice.

#### (4) Expansion of Victim Rights

Traditionally, criminal law focused on the accused and the state. However, jurisprudence has gradually recognized victims’ rights. Courts have emphasized compensation, participation, and dignity of victims within the process.

The interaction between constitutional mandates, statutory provisions, and judicial interpretation is not always seamless.

- Constitutional rights often remain under-enforced due to systemic delays.

- Statutory reforms sometimes prioritize efficiency over fairness.
- Judicial activism fills gaps but raises concerns about overreach.

This tension is not accidental—it reflects the complexity of balancing state power with individual liberty.

The foundations of criminal justice in India are robust in theory but uneven in practice. Constitutional safeguards provide a strong normative framework, statutory laws offer structure, and judicial interpretation injects dynamism. However, the real challenge lies in implementation. Reforms such as the Bharatiya Nyaya Sanhita must therefore be assessed not by their intent but by their impact. If they strengthen due process, ensure fairness, and reduce systemic inefficiencies, they contribute meaningfully to reform. If not, they risk becoming symbolic changes that leave deeper structural issues untouched. A serious study of criminal justice reform must therefore go beyond legislation and engage critically with these foundational principles.

### **2.3. THEORETICAL JUSTIFICATIONS AND DOCTRINAL BASIS OF THE RESEARCH THEME**

Any serious attempt to study reforms in criminal law cannot stop at describing statutory changes. Criminal law is deeply rooted in theory. The way a society chooses to punish, prevent, or reform crime reflects its moral priorities, political structure, and social realities. Therefore, while the Bharatiya Nyaya Sanhita (BNS), 2023 is often presented as a legislative reform, its true significance lies in whether it reflects a shift in underlying theories and doctrinal principles of criminal justice.

This section attempts to examine those foundations. It looks at why criminal law exists in the first place, what justifies punishment, and how legal doctrines structure the system. More importantly, it tries to connect these theoretical ideas with the actual functioning of criminal law in India. The aim is not just to explain theories but to question whether present reforms genuinely align with them.

#### **2.3.1. THEORETICAL JUSTIFICATIONS OF CRIMINAL LAW**

##### **(1) Retributive Theory**

The retributive theory is based on a very straightforward idea: a person who commits a wrong deserves to be punished. It does not focus on future consequences but on moral accountability.

In simple terms, punishment is justified because the offender has done something wrong.

This idea continues to influence Indian criminal law, especially in serious offences. The Supreme Court's approach in *Bachan Singh v. State of Punjab* reflects this thinking to some extent: "The death penalty may be imposed in the rarest of rare cases."

Here, punishment is linked to the gravity of the offence and the moral outrage of society. However, there is a limitation to this approach. Retribution may satisfy a sense of justice, but it does not necessarily prevent future crimes or address the reasons behind criminal behavior. If reforms like BNS continue to rely heavily on punishment without addressing structural issues such as poverty or lack of education, then the system remains reactive rather than transformative.

## (2) Deterrent Theory

The deterrent theory assumes that people avoid crime because they fear punishment. It works on the logic that stricter penalties will discourage both the offender and others from committing similar acts. Indian criminal law has historically relied on deterrence, especially in areas like economic offences and crimes against the state.

However, this raises an important question: does harsher punishment actually reduce crime? In reality, deterrence depends more on the certainty of punishment than its severity. If the chances of being caught and convicted are low, even strict laws may fail to deter crime. This is particularly relevant in India, where delays in investigation and trial are common. This creates a mismatch. Laws may become stricter on paper, but if enforcement remains weak, the intended deterrent effect is not achieved. Therefore, reforms under BNS must be evaluated not just by the severity of punishments but by improvements in implementation.

## (3) Preventive Theory

The preventive theory focuses on stopping crime before it happens again. Instead of punishing past actions, it tries to ensure that the offender does not get an opportunity to repeat the offence. This is visible in provisions relating to preventive detention and habitual offenders. While such measures may be effective in certain situations, they also raise serious concerns about individual liberty.

Preventive detention laws, for example, allow the state to detain individuals without trial under certain conditions. This directly conflicts with the idea of personal liberty under Article 21. The tension here is clear: how much power should the state have in the name of prevention? This remains an unresolved issue in Indian criminal law.

Reforms like BNS need to address this balance carefully rather than simply expanding state power.

#### (4) Reformative Theory

The reformative theory represents a more modern and humane approach. It views crime as a result of social, psychological, or economic factors rather than purely moral failure. The focus here is on changing the offender rather than simply punishing them.

The Supreme Court in *Mohd. Giasuddin v. State of Andhra Pradesh* observed: “The objective of punishment should be to reform the offender.” This approach is particularly relevant in cases involving juveniles or first-time offenders. It recognizes that punishment alone does not solve the problem of crime.

However, the practical implementation of reformative justice in India is still limited. Prisons are often overcrowded, and rehabilitation programs are not always effective. If BNS aims to modernize criminal law, it must strengthen mechanisms for rehabilitation rather than focusing only on punishment.

#### (5) Restorative Justice

Restorative justice is a relatively new concept in criminal law. It focuses on repairing harm rather than punishing the offender. It involves the victim, the offender, and sometimes the community in resolving the impact of the crime. In India, this approach is not fully developed, but certain elements exist. For example, compounding of offences and victim compensation schemes reflect restorative principles. The advantage of this approach is that it gives importance to the victim, who is often overlooked in traditional criminal proceedings. However, it also requires a strong institutional framework, which is still evolving. If reforms under BNS are truly forward-looking, they should incorporate more restorative mechanisms instead of relying solely on traditional punishment models.

### **2.3.2. DOCTRINAL BASIS OF CRIMINAL LAW**

While theories explain why we punish, doctrines explain how the law operates. These doctrines form the backbone of criminal justice and ensure consistency and fairness.

#### (i) Principle of Legality

The principle of legality ensures that no person can be punished unless their act is clearly defined as a crime by law. This protects individuals from arbitrary state action. This principle

is reflected in Article 20(1) of the Constitution and reinforced in *Rattan Lal v. State of Punjab*. The importance of this doctrine lies in clarity. Laws must be precise and understandable. If provisions under BNS are vague or overly broad, they risk violating this principle.

#### (ii) Presumption of Innocence

One of the most fundamental principles of criminal law is that an accused person is presumed innocent until proven guilty. In *Kali Ram v. State of Himachal Pradesh*, the Court held: “If two views are possible, the one favourable to the accused must be adopted.”

This principle ensures fairness but also places a heavy burden on the prosecution. It reflects the idea that it is better to let a guilty person go free than to punish an innocent one.

#### (iii) Burden and Standard of Proof

The prosecution must prove its case beyond reasonable doubt. This high standard is essential because criminal punishment can severely affect a person’s life and liberty. In *Sharad Birdhichand Sarda v. State of Maharashtra*, the Court emphasized that: “Suspicion cannot take the place of proof.” This doctrine ensures that convictions are based on strong and reliable evidence.

#### (iv) Actus Reus and Mens Rea

Criminal liability generally requires two elements: a wrongful act and a guilty mind. This ensures that individuals are punished only when they are morally blameworthy. However, modern laws sometimes introduce strict liability offences where intent is not required. While this may be useful in certain areas, it also raises concerns about fairness.

#### (v) Doctrine of Proportionality

Punishment must be proportionate to the offence. Excessive punishment can be as unjust as no punishment at all. In *Mithu v. State of Punjab*, the Court struck down mandatory death penalty provisions for being arbitrary. This doctrine ensures that sentencing remains balanced and considers individual circumstances.

#### (vi) Fair Trial

The concept of a fair trial is central to criminal justice. It includes the right to legal representation, an impartial judge, and a proper opportunity to present one’s case. In *Zahira Habibullah Sheikh v. State of Gujarat*, the Court stated: “A fair trial is the foundation of

criminal justice.”

It was held that without a fair trial, the entire system loses its legitimacy.

### **CONCLUSION**

Theoretical justifications and doctrinal principles form the foundation of criminal justice. They determine the purpose, structure, and functioning of the system. In India, these foundations are well-developed in theory but often face challenges in practice. Reforms like the Bharatiya Nyaya Sanhita must therefore be evaluated not just as legislative changes but as reflections of deeper legal principles. If these reforms align with constitutional values, strengthen fairness, and address practical issues, they can contribute to meaningful change. Otherwise, they risk becoming formal changes without real impact. A critical understanding of theory and doctrine is therefore essential. It ensures that discussions on criminal justice reform remain grounded, analytical, and relevant.



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