



INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL**
**ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

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BHARATIYA NYAYA SANHITA, 2023: A CRITICAL EVALUATION OF INDIA'S NEW CRIMINAL JUSTICE FRAMEWORK

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ABSTRACT

Criminal penalties should evolve with society as crime rates grow. India's substantive criminal law was based on the colonial-influenced 1860 Indian Penal Code for 160 years. Modern civilisation requires severe criminal justice updates. The comprehensive Bharatiya Nyaya Sanhita (BNS) will replace the Indian Penal Code in 2023. The BNS handles numerous common infractions, unlike the old legislation. The Bharatiya Sakshya Adhiniyam (2023) and other laws seek to reform Indian criminal law and end colonialism. Sanhita streamlines mob lynching, organised crime, terrorism, and national sovereignty violations under the IPC. Policymakers are leveraging technology, speeding up court processes, and prioritising victim-centered justice to solve these expanding criminal justice system concerns. This research explores whether the BNS significantly changes criminal law or just rearranges it. Private rights, crimes, punishments, classifications, and constitutions change. Bharatiya Nyaya Sanhita criminal legislation is criticised. Compare the Bharatiya Nyaya Sanhita's pros and cons. Criminal penalties should evolve with society as crime rates grow. India's substantive criminal law was based on the colonial-influenced 1860 Indian Penal Code for 160 years. Modern civilisation requires severe criminal justice updates. The comprehensive Bharatiya Nyaya Sanhita (BNS) will replace the Indian Penal Code in 2023. The BNS handles numerous common infractions, unlike the old legislation. The Bharatiya Sakshya Adhiniyam (2023) and other laws seek to reform Indian criminal law and end colonialism. Sanhita streamlines mob lynching, organised crime, terrorism, and national sovereignty violations under the IPC. Policymakers are leveraging technology, speeding up court processes, and prioritising victim-centered justice to solve these expanding criminal justice system concerns. This research explores whether the BNS significantly changes criminal law or just rearranges it. Private rights, crimes, punishments, classifications, and constitutions change. Bharatiya Nyaya Sanhita criminal legislation is criticised. Compare the Bharatiya Nyaya Sanhita's pros and cons.

Keywords: Bharatiya Nyaya Sanhita, criminal justice system, legislation, penalty, crime, offence, and penal law.

1. Introduction

It is safe to say that criminal justice is a cornerstone of democratic rule. In doing so, it ensures the rule of law, protects individual rights, and holds lawbreakers to account. Ensuring peace and order, protecting individual rights, and holding those in power accountable are essential tenets of every democratic governmental system. Historically, the Indian Penal Code (IPC) and other colonial statutes passed by the British during India's colonisation have formed the basis of the country's criminal justice system. In India, the criminal justice system is based on the Indian Penal Code (IPC), which was drafted by Thomas Babington Macaulay, Chairman of the First Law Commission. The code, which dealt with several types of offences and their penalties, became effective on January 1, 1860.¹

Despite its crucial role in criminal law systematisation, the IPC came under growing fire in light of contemporary social and technical realities for its colonial origins and seeming obsolescence. Many sections were deemed irrelevant to modern situations by scholars and lawmakers. A number of contemporary issues, such as international criminal networks, mob violence, cybercrime, terrorism, and organised crime, were not adequately addressed by nineteenth-century law. Furthermore, there was a growing need for comprehensive criminal law reform due to criticisms that the IPC's framework was too complicated, out of date, and focused on the state instead of crime victims.²

Criminal law and the Code of Criminal Procedure were approved for operation by both the Centre and the States when they were included into Entries 1 and 2 of the Concurrent List of the Seventh Schedule at the start of the Constitution of India. In order to propose changes to the current criminal justice system, committees such as the Malimath Committee and the Madhav Menon Committee were established. Nevertheless, the intended outcomes were not achieved since their suggestions were not executed in their entirety.

Despite periodic revisions to account for changing social mores, ideas about justice, and the

¹ Pandey, B. M., & Naha, M. M. (2024). A CRITICAL ANALYSIS OF BHARATIYA NYAYA SANHITA, 2023. *International Journal of Legal Studies and Research*, 13(2), 39-48.

² Rai, O. P. (2025). Criminal justice reforms in India: a critical study of the Bharatiya Nyaya Sanhita, 2023. *Journal of Advanced Education and Sciences*, 5(2), 88-93.

modern character of crimes, the penal code failed to provide the clear and effective definition of crimes and penalties necessary to stem the tide of widespread criminality. Since laws must be flexible to meet the evolving demands of society, it was necessary to design a criminal code that would handle all the issues that had gone unresolved in earlier statutes. Thus, the Bharatiya Nyaya Sanhita will supersede the IPC.

2. Exigency For the Replacement of the Existing Indian Penal Code:

The constantly increasing crime rate is a result of many factors, including but not limited to: a lack of employment opportunities, poverty, political and religious tensions, inequalities in social integration, discrimination in opportunity conferral, gender bias, substance abuse, and a lack of transparency, accountability, and corruption among the agencies tasked with enforcing these laws and delivering justice.

There has been a disturbing increase in the incidence and spread of crimes brought about by globalisation, technology, development, and advances in several domains. A criminal's ability to conceal themselves and carry out a crime has also been enhanced by their increased understanding of technological matters. Legislations enacted to combat crimes must incorporate punishments, penalties, and redressal to calibrate offences and curb threats that aim to disrupt and usurp society's modality, as the nature, form, and means of perpetrating crimes are dynamic and adaptable. It is necessary to pass a new law that addresses the modern nature of crimes and offences in order to make the justice system more effective, since the old laws regarding penal provisions have become irrelevant in many areas and do not reflect the needs of modern society.

3. Bharatiya Nyaya Sanhita:

There have been major revisions and additions to the criminal justice system as a result of the BNS. With 358 chapters, the Bharatiya Nyaya Sanhita covers all aspects of yoga. The legislation has made an effort to organise the crimes in a clear and concise way, with a focus on twenty chapters. There has been an increase in the fine for certain offences and an enhancement of the jail sentence for 33 offences. Community service is the new standard for minor infractions as a form of punishment. To lessen the load on correctional facilities, community service is defined as activities that have a positive impact on the community at large. The phrase "community service" is not defined in the BNS, but it is explained in section

23 of the BNS in an explanatory note. The note indicates that it refers to community-beneficial activity that a court might compel a prisoner to do as a punishment.

4. Nature Of the Promulgation:

As a proclamation, the Bharatiya Nyaya Sanhita primarily follows the retributive and deterrent character of punishment.

The Deterrent Approach: Theft now carries stricter penalties according to an amendment to Section 379. Convictions for the second or subsequent time carry a maximum jail sentence of five years instead of three. Also, first-time offenders whose stolen goods is valued at less than Rs. 5,000 might now be sentenced to community service instead of a fine. The crime of mischief, on the other hand, has been expanded under Section 324 and now carries a fine, a jail sentence of up to one year, or both. As property loss or damage grows, so does the severity of punishment.

The Reformatory Approach: The publishing of misleading or incorrect material that endangers the unity, integrity, or security of the country is now a crime according to the revised Section 197(1)(d). Reducing anti-national acts and promoting national integration are the goals of this amendment. It is easy for law enforcement to abuse their authority due to the ambiguity and lack of clarity in many parts of the law. It is possible for the Superintendent of Police to misuse his authority by deciding to file a case under this provision or the Unlawful Activities (Prevention) Act, 1967. Additionally, due to medical improvements that allow for speedier recuperation, the number of days necessary for "grievous hurt" has been reduced from 20 to 15 under Section 116.

5. Elucidation Of Punishments Under the Bharatiya Nyaya Sanhita:

Changes to the existing crimes and their penalties were also made by the promulgation. Listed below are the sections of the Bharatiya Nyaya Sanhita that have undergone significant revisions.

5.1 Punishments³:

Community Service: Community service is the new standard for minor infractions as a form

³ Chapter II of the Bharatiya Nyaya Sanhita.

of punishment. Western nations, including the United Kingdom, the United States of America, and Australia, have long used community service as a kind of punishment. To lessen the load on correctional facilities, community service is defined as activities that have a positive impact on the community at large. The phrase "community service" is not defined in the BNS, but it is explained in section 23 of the BNS in an explanatory note. The note indicates that it refers to community-beneficial activity that a court might compel a prisoner to do as a punishment.

5.2 Offences Against Women and Child⁴:

Against Women- Matthew Hale's writings provide the foundation for the marital rape exemption, which is based on the idea of irreversible consent following marriage. It was the English common law that formalised this idea, and the Indian Penal Code (IPC) adopted it. Even though it was repealed in the UK in 1991, it is still in effect. In 2013, the Justice Verma Committee suggested doing away with this clause, however it was never put into action. A recent ruling from the Delhi High Court did not reach a unanimous conclusion about the provision's validity, hence it is now with the Supreme Court. The BSN's passing offered a chance to acknowledge married women's bodily autonomy and sexual integrity, eliminate the marital rape exemption, and decolonise India's criminal justice system. The BSN's Section 63 still has this loophole, which is problematic since it upholds ideas from the colonial age that have helped to normalise violence against women.

The Sanhita criminalises and punishes sexual intercourse with a woman through the use of any fraudulent means, including but not limited to the false promise of employment, promotion, or marrying her under the guise of concealing one's identity. Even though it wouldn't be considered rape, having sexual relations with any woman may result in a fine and/or a jail sentence of up to 10 years under section 69 of the Sanhita.⁵

Against Child- Anyone who uses a child as an accomplice in a crime is subject to the penalties outlined in Section 95, which include a fine and an imprisonment sentence of three to ten years, with the minimum sentence being three years and the maximum being ten years.⁶

The individual who hired, engaged, or engaged a minor is considered to have committed the crime himself if the minor subsequently commits any crime; this includes using a minor for pornographic or sexually exploitative purposes. The offender, including anybody who engages in sexual activity with a minor, would face the same penalties as outlined in the Sanhita in the

⁴ Chapter V of the Bharatiya Nyaya Sanhita.

⁵ Section 69 of the Bharatiya Nyaya Sanhita.

⁶ Section 95 of the Bharatiya Nyaya Sanhita.

event of a conviction.

5.3 Offences Against the State: Section 152 of the Bharatiya Nyaya Sanhita categorises all acts that threaten India's sovereignty, unity, or integrity, and it specifies that anyone who commits secession, armed rebellion, subversive activities, or who encourages others to do the same through the use of words, whether spoken, written, graphic, electronic, or financial means, is guilty of the offence and faces a lifetime sentence or a maximum of seven years in prison.

5.4 Other Offences

Changes in Trafficking: Penalties for trafficking in minors have been enhanced as a result of new trafficking regulations. Using a minor as an accomplice in a criminal act is punishable under Section 95 of the BNS. The procurement of any individual under the age of eighteen is now dealt with under Section 96 of the BNS, which has superseded Section 366A of the IPC.

Mob Lynching: There is a penalty for mob killings under Section 103(1) of BNS. When five or more people commit murder in concert based on race, caste, community, sex, place of birth, language, personal belief, or any other cause, they are liable and punished under Section 103(2) for murdering in a mob.

Causation by Negligence: Death caused by an impulsive or careless conduct that does not constitute culpable murder is punishable under Section 106 of BNS. Death caused by careless or reckless driving is also punishable under this law.

Organized Crime: For crimes such as abduction, robbery, car theft, extortion, land grabbing, contract killing, economic offences, cybercrimes, and trafficking in people, narcotics, weapons, or illegal commodities or services, Section 111 of BNS lays out the punishments.

Attempt to Commit Suicide: The BNS no longer includes the offence of attempting suicide. Those who try to take their own lives with the purpose to force or hinder any public official from carrying out his official job are now punishable by a new section (226).

5.5 Death Penalty

A comprehensive review of the constitutionality of the death sentence was prompted by the intensification of conversation around it in India in 2015. The Law Commission conducted an extensive examination and ultimately published a report calling for its elimination, with the exception of terrorism-related instances. Article 14, which establishes equality before the law, and Article 21, which protects the right to life, are both violated, according to the research, by

the death sentence in India. The study also bemoaned the fact that death sentence cases often fail to take into account the rehabilitative and retributive components of justice.

In 2018, the Home Ministry sent out a proposal to 14 state governments asking for their thoughts on doing away with the death penalty. Twelve states argued that capital punishment is still an effective deterrent against particularly heinous and violent crimes, while only two states supported its abolition. On the other hand, several human rights groups and activists have maintained that there is no special deterrent impact of the death penalty based on global factual data.

At the UN Human Rights Council in 2021, India voted against a motion that would have instituted a moratorium on the death penalty, further highlighting its position on the matter. An important step towards decolonisation would have been to abolish the death penalty. This highlights the need for a more complex system of criminal justice that places a greater emphasis on rehabilitation and restorative justice rather than revenge.

6. Drafting Issues in the Bharatiya Nyaya Sanhita, 2023

Scholars and judges have been quite critical of the Bharatiya Nyaya Sanhita, 2023 (BNS) because of its stated goal of modernising India's penal laws that date back to the colonial period and bringing them in line with constitutional principles. While there are certain commendable revisions in the BNS, the quality and sincerity of the legislative reform process are called into question by a number of inconsistencies, omissions, and cosmetic adjustments.

The Key drafting issues plaguing the BNS-:

Minimal Substantive Departure from the Indian Penal Code, 1860

The fact that the BNS essentially restates the Indian Penal Code, 1860 (IPC) with certain structural and wording changes is a common complaint levelled against it, even though it was established as a revolutionary code. Those who disagree see this as more of a "rebranding" effort than an actual reform of the criminal justice system.⁷

Mechanical Copy-Paste and Legacy Errors

It seems that the BNS retained several provisions from the IPC without giving them the attention they needed or fixing any mistakes in their original wording. Section 64 of the BNS

⁷ Dr. Justice Balbir Singh Chauhan, 'Reforming Criminal Law in India: A Critical Review of Bharatiya Nyaya Sanhita' (2024) 15(2) Indian Journal of Legal Studies 54

is a prime illustration of this, since it mimics the problematic wording of Section 376(1) of the IPC.

There is an internal discrepancy since, after the Criminal Law (Amendment) Acts of 2013 and 2018, the phrase "imprisonment of either description" was never deleted from Section 376(1) and the word "rigorous imprisonment" was added to it.⁸ Lack of legislative vigilance and rigorous examination of inherited material is suggested by the repetition of the same paradoxical language in Section 64 of the BNS.⁹

Included in this is how realistically the new legislation can be put into practice. A change in legislation is not enough to alter the criminal justice system effectively; there must also be an improvement in-:

- Police training
- Judicial capacity
- Forensic infrastructure
- Legal awareness among citizens

It is debatable whether the Bharatiya Nyaya Sanhita has been successful in the absence of these institutional reforms.

7. Conclusion

Despite the fact that the act calls for many beneficial changes, it also raises serious worries about violations of civil rights, constitutional safeguards, and the misuse of broad legal provisions. Therefore, in order for the BNS to effectively address security concerns while also protecting fundamental rights, it will be necessary to conduct continual study and make possible changes.

Last but not least, rather than being the last word on criminal justice reform in India, the Bharatiya Nyaya Sanhita might be seen as only the beginning. Without a comprehensive approach, the BNS risks losing some of its transformative power and its provisions can lead to legal ambiguity, judicial overburden, and social and political abuse, among other problems. Its long-term effectiveness and viability depend on its textual integrity, institutional capacity, legal sensitivity, judiciary's interpretative prudence, and the State's dedication to implementing it both literally and in spirit.

⁸ Justice Verma Committee Report (n 4) para 12.4.

⁹ Bharatiya Nyaya Sanhita 2023, s 64 (replicating IPC 1860, s 376(1)).

8. References

- Press Information Bureau, Government of India. Bharatiya Nyaya Sanhita in place of Indian Penal Code [Internet]. 2023. Available from: <https://www.pib.gov.in/PressReleasePage.aspx?PRID=2115169®=3&lang=2>
- Sharma V. Challenges in the Indian criminal justice system: need for comprehensive reform. *Journal of Criminal Justice Studies*. 2020;11(1):1–18.
- Justice Verma Committee Report (2013)
- Indian Penal Code (IPC)
- Bharatiya Nyaya Sanhita (BNS)
- Law Commission of India. Consultation paper on reform of criminal laws. New Delhi: Government of India; 2020.
- Mehta R. Modernizing India's criminal justice system: the transition from IPC to BNS. *Journal of Legal Policy and Governance*. 2023;7(2):81–97.

