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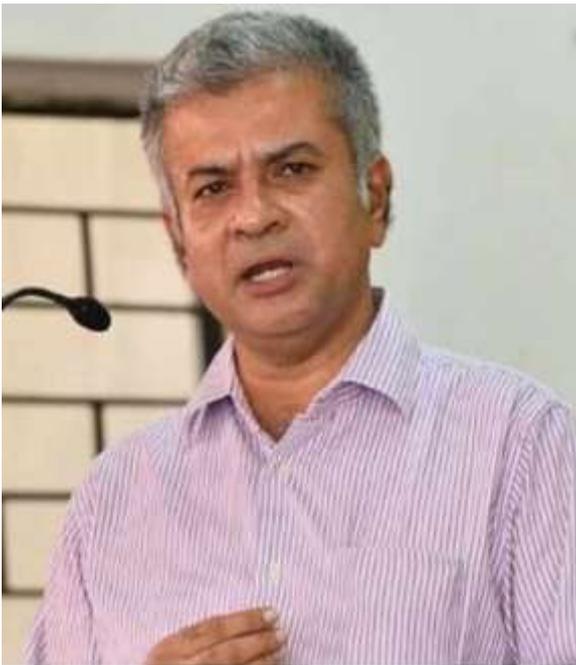
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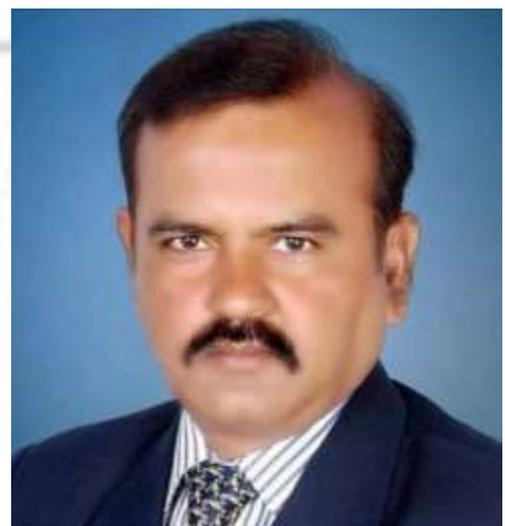


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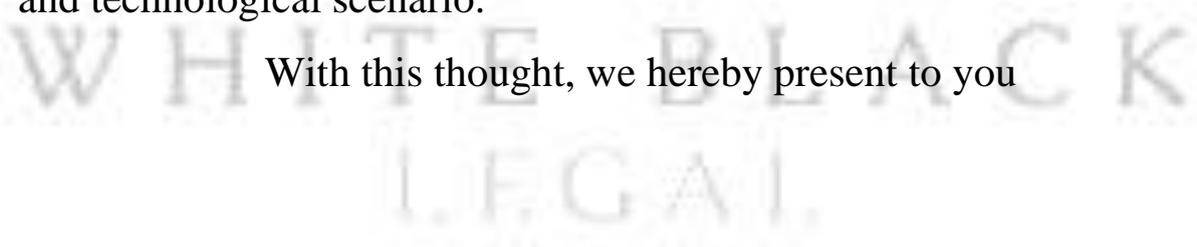
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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you



COMPARATIVE ANALYSIS OF INDIAN PENAL CODE (IPC), 1860 WITH BHARATIYA NYAYA SANHITA (BNS), 2023

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CHAPTER I

INTRODUCTION

The Nyaya Sanhita Bill, 2023 ('BNS') replaced the Penal Code of 1860 ('IPC'). It became law when the second draft was introduced on December 12, 2023, and was approved by the Lok Sabha on December 20, 2024, and the Rajya Sabha on December 21, 2023. The first Bill for the BNS was taken out of the Lok Sabha on December 12, 2023, so that new copies could be made that included several changes suggested by the Standing Committee. On December 25, 2023, the president signed into law the three bills that changed the crime laws. The Indian Penal Code (IPC), 1860 is one of the oldest criminal law systems in the world. It has been the main part of India's criminal justice system for more than 160 years. The IPC has been changed many times to keep up with new social, political, and technological problems since it was first made when India was a British colony. But in the last few years, it has become clearer that it isn't very good at dealing with current problems like cybercrime, terrorism, and crimes against women and children. The Indian government passed the Bharatiya Nyaya Sanhita (BNS), 2023 to replace the Indian Penal Code (IPC)¹ with a more modern, efficient, and victim-centered law system that better fits India in the 21st century. The BNS, 2023 is a plan to completely change the country's criminal law in order to keep up with changes in crime, how justice is delivered, and the protection of rights. The Indian Penal Code (IPC) is still an important tool for criminal law enforcement, but the draft BNS wants to make things easier, define terms, and add new types of crimes that the IPC didn't cover enough, like cybercrime, hate speech, and new types of terrorism. Vulnerable groups, like women, children, and communities with few resources, have been under-represented in the IPC's offerings in the past. They are also given top consideration here.

¹ Indian Penal Code, 1860, No. 45 of 1860, § 1 (India).

This change comes at a time when India's criminal justice system is having a lot of problems, such as cases taking too long, laws that are too simple, and crimes getting more complicated. The BNS, 2023 tries to fix these issues by making legal terms easier to understand, better services for helping victims, making less serious actions not illegal, and giving harsher punishments for more serious crimes. The law stresses procedural fairness and openness in order to make courts work better and ease the load on courts that are already very busy. Making the switch from the IPC to the BNS in 2023 is also not easy. There are some good things about the new model, but there are still worries about how well it will protect constitutional rights, keep people's freedoms, and stop power abuse. People are talking about how the BNS handles some crimes, like terrorism, hacking, and sedition. This has caused people to think about how this might impact civil liberties. The IPC, 1860, and the BNS, 2023 are compared in this paper. The differences, similarities, and possible effects of these two legal systems on Indian criminal law and justice are looked at.

CHAPTER II

ABSTRACT

Over a century and a half of India's criminal justice system has been built on the Indian Penal Code (IPC), 1860. Though historically important, the IPC has shown significant shortcomings in handling new crimes, changing social reality, and the complexity of the current justice system. The demand for more victim-centric legal frameworks and the emergence of new kinds of crime such as cybercrimes, terrorism, and sexual violence made clear reform of the IPC imperative. In reaction to these difficulties, the Indian government passed the Bharatiya Nyaya Sanhita (BNS), 2023, a thorough review of the current criminal law system. The BNS aims to modernize the criminal justice system by means of better procedural efficiency of the court system, more strict penalties for some offenders, and clearer definitions of newly developing crimes.

Focusing on the main reforms the BNS has brought, this study offers a comparative analysis of the IPC, 1860² and the BNS, 2023. Important areas of comparison include the modernization of crime definitions, the decriminalization of minor offenses, victim protection provisions, and the treatment of emerging crimes including cybercrime and cyberterrorism. Particularly in terms of judicial efficiency, the rights of victims, and human rights protection, this study

² Bharatiya Nyaya Sanhita, 2023 (India).

evaluates how the BNS solves the constraints of the IPC.

The study draws attention to the strengths of the BNS including its progressive attitude to digital offenses, child protection, and gender-based violence. Especially noteworthy are the BNS's victim-centric clauses which provide victims of sexual offenses, domestic violence, and human trafficking better help and protection. Still, especially in relation to crimes like sedition and terrorism, the study also raises questions about the balance between national security and individual freedoms. By means of a comprehensive review of the BNS, this study seeks to assess if the BNS, 2023 really modernizes India's criminal justice system or only implements symbolic changes devoid of addressing fundamental structural problems.

The results give significant new perspectives on the direction of criminal law in India and a critical evaluation of the BNS's ability to increase the efficiency of the criminal justice system as well as its fairness.

CHAPTER III

RESEARCH PROBLEM STATEMENT

For about 160 years, the Indian Penal Code (IPC), 1860 has been the main body of criminal law in India. It has a lot of rules that cover a lot of different crimes. But as India's society, economy, and technology have grown, the IPC has shown itself to be less and less effective at dealing with modern problems like hacking, terrorism, abuse of social media, human trafficking, and violence against women. Even though the IPC covers a lot of ground, many of its sections are unclear, out-of-date, and not designed to deal with new types of illegal behaviour. This is especially true in this digital age. People have also said that the IPC isn't applied the same way across the country, that it slows down the court system, and that it's not enforced efficiently.

The Bharatiya Nyaya Sanhita (BNS), 2023 was made to fix these problems and make sure that India's criminal justice system could handle the needs of the 21st century. This new code tries to replace the IPC by making its clauses more up-to-date, giving clearer meanings of crimes, and focussing on justice more on the victim. The BNS wants to deal with important issues like giving women and children more rights, making small offences less serious, harsher punishments for major crimes, and dealing with technical crimes like hacking and

cyberterrorism.

Of course, the BNS has problems being applied and carried out because it is a new law. Even though the suggested changes are bold and forward-thinking, there are concerns about how well the BNS will work in real life. How well will the BNS make sure that justice is done quickly? Will it find the right balance between protecting people's rights and making the country safer? Are the changes just words, or can the victim-centered approach to the law really help groups that aren't getting enough help? Also, how will the BNS work with existing criminal laws like the Evidence Act and the Criminal Procedure Code³ (Cr.P.C.)? Both of these laws will need to be changed to fit the new law.

These problems will be looked into by comparing the IPC and the BNS as laws. This will help figure out how the BNS might affect India's criminal justice system. The study will look at the differences between the two codes in terms of both process and substance. It will also look at how the law might affect legal procedures such as investigations, trials, and sentencing. The study will also look at the BNS's effects on human rights and see if it really gets the Indian criminal justice system up to date or just makes some cosmetic changes.

CHAPTER IV

COMPARATIVE ANALYSIS

Historical background and goals: the Indian Penal Code (IPC).

The Indian Penal Code (IPC), which went into force in 1860, was mostly made by Lord Macaulay to make India's criminal laws more consistent while the country was under British rule. It spells out the rules for dealing with crimes like theft, murder, and fraud, as well as the punishments that go along with them. During colonial times, the IPC's main goal was to keep the peace. It has parts that show British fears and the social structure of that time.

Bharatiya Nyaya Sanhita (BNS).

As part of a larger plan to change India's criminal law and make it more in line with modern society's needs, the Bharatiya Nyaya Sanhita was put forward. Its main goal is to fight new kinds of crimes that aren't really covered by the IPC, such as cybercrime, financial fraud, and digital harassment. It makes legal terms easier to understand and makes sure that laws focus

³ The Code of Criminal Procedure, 1973, No. 2 of 1974, § 1 (India).

more on human rights. This shows how important it is for everyone to have a quick trial and be treated fairly.

Important things about BNS:

When the BNS was made, it got rid of the IPC and merged and changed the laws that dealt with crimes. While the BNS tries to find a balance between making too many crimes and not making enough crimes, some general crimes, like crimes against people and the State, still make it there⁴. But because things need to change, crimes under different parts of the IPC, like Section 377, Section 124-A, and Section 309, don't have a place⁵. As a result of Section 106 of the BNS, crimes like hit-and-run have been registered, and the maximum sentence has been raised to 10 years. It has 358 rules that are organised into 20 parts.

Here are the most important parts of the comparison: Changes in Structure and Terminology: One big change between the IPC and the BNS is how the parts are put together and what words are used.

The Indian Penal Code (IPC) is made up of 511 different parts. A lot of these areas are set up based on the type of crime they talk about. The IPC has mostly stayed the same since it was first made, though there have been some small changes.

BNS: The BNS moves some code around to make it easy to read and understand. It takes out 511 parts and puts the ones that are left in a better order under 358 more general names. As an example, definitions are now included in section 2 different phrases instead of separate sections for physical and digital crimes. This is because the BNS combines them into one section, which eliminates the need for extra work. Also, the BNS has new words and sentences that make legal language more open and simpler for people today.

2. Consolidation and Streamlining: The BNS brings together the Indian Penal Code's (IPC) scattered sections, cutting the total number of Sections from 511 to 358. For example, the definitions clauses have been merged into a single part, section 2. This has made the law easier to understand. The problem with the IPC's difficult and dispersed rules has been fixed. For

⁴ law Commission of India, Report No. 42, Draft Penal Code (1968).

⁵ The Journal of Constitutional and Administrative Law, available at www.jcaljournal.com.

example, Chapter 5 of the BNS brings together crimes against women and children that were previously spread out over 4 different chapters of the IPC. This BNS is like the Sanhita of a normal person, so it's easy to understand.

3. Updated Language and Definitions: Outdated and colonial language has been taken out, and standard words have been used instead. "Minor" has been changed to "child," and "insane" has been changed to "person whose mind is not sound."⁶ Expanded Jurisdiction: Section 48 of the BNS has made it illegal to help someone break the law outside of India. This makes the law more effective.

4. Norms for Procedures

• IPC: Steps to Take: The IPC's rules for how things should be done are based on how the law was used in the 1800s, which may not be as useful today.
Court Procedures: The IPC doesn't cover a lot of modern procedural problems that make trials less efficient and less effective.

• BNS, 2023: Steps to Take: The BNS has new rules for how to do things that make the legal process easier, faster, and better able to deal with modern problems that come up during the process.

Court Processes: It includes steps to make trials more efficient, such as clearer rules for proof, hearings, and managing the case.

5. Rights of Charged People and Victims

• IPC: Rights of the Accused: The IPC protects the accused in some basic ways, but these may not fully match modern human rights standards.

Victim Rights: The IPC doesn't have many protections and help options for victims.

• BNS, 2023: Accused Rights: The BNS gives the accused more rights and protections, which is in line with modern human rights standards.

Victim Rights: It includes more ways for victims to get help, get paid, and be involved in the court process. The goal is to better meet the needs of victims.

6. Effects on both small and large crimes

• IPC: Minor Offences: The IPC may not be as open or up-to-date when it comes to how it

⁶ Indian Journal of Criminology and Criminal Justice, available at www.ijccj.com.

handles minor offences. For Major Offences: The IPC handles major offences in a more traditional way, which may not always fit with how the law works today.

- BNS, 2023: Small Crimes: The BNS offers new and maybe even more adaptable ways to deal with small offences, such as streamlined processes and different ways to settle disagreements.

Major Offenders: It includes updated frameworks for major offences that are meant to deal with them in a way that meets current standards of fairness and efficiency.

7. Legal Changes for the Community

- Practice with the IPC: Lawyers are used to the IPC's structure and rules for how to follow it. Problems: Getting used to the IPC have meant figuring out how to use its complicated and sometimes out-of-date rules.

- BNS, 2023: Practice: Lawyers will have to get used to the new rules in the BNS, which include changes to definitions, processes, and sentences.

Training: To use the new code successfully in real life, people will need to be trained and make some changes.

8. Changes to crimes against property: The meaning of theft has been widened to include stealing cars, government property, and other things. Under Section 304 of the BNS, "snatching" has been made a separate crime. Getting away after causing rash and negligent driving: Section 106(2) talks about hit-and-run cases. Mob Lynching: Mob lynching wasn't a different crime before BNS. It is made a dangerous type of culpable homicide in Section 103 of the BNS.

9. New Types of Crimes: Sections 111 and 112 of the BNS make "organised crime" and "petty organised crime" the first core crimes that fit these categories. Part 113 has been used to bring in the phrase "terrorist act." According to Section 111 of the BNS, "organised crime" is any ongoing illegal activity that involves violence, threats of violence, coercion, theft, kidnapping, contract killings, selling illegal goods or services, drugs, people for prostitution, or money⁷. It can be done by one person or a group of people working together, either as part of an organised crime syndicate or on behalf of that syndicate, using violence, threats of violence, intimidation, coercion, or any other illegal method to get direct or indirect material benefit, including

⁷ Ministry of Home Affairs, Government of India, Justice Malimath Committee Report on Reforms in the Criminal Justice System (2003).

financial benefit.

10. Suicide attempt: The suicide attempt has been taken out of the BNSS because it is against the Mental Health Care Act of 2017.

11. Changes to punishments: "Community service"⁸ is now a punishment for some crimes under Section 4(f). This is an attempt to change people's behaviour and bring about "Nyaya" in society.

12. Sexual activity after making a false promise to marry: Section 69 of the BNS makes it illegal to have sexual activity after making a false promise to marry or by hiding something.

According to Sections 76 and 77 of the BNS, 2023, assault or use of criminal force against a woman with the aim to undress her and voyeurism are now crimes against both men and women. Section 141 of the BNS, 2023 changes the crime of bringing someone from a foreign country into the country to include both boys and girls.

14. Nyaya and Community Service as an Idea: "Nyaya" stands for fair treatment of everyone. As of now, the BNS moves from the idea of punishment to Nyaya and limits the deterrence part by adding rules that aim to give justice to everyone. The Nyaya aspect can be seen in the change from a punitive to a reformative method. A number of punishments have been balanced, with some terms getting longer and a minimum pattern of sentences set by law. It's a good thing that Section 4 now allows "community service" as a punishment. India's legal system has taken a big step forward by requiring people who commit small crimes to do community service. Even though the Indian criminal justice system is mostly based on the idea of revenge and looks at crimes against the state, it knows that it needs to change so that the rights and worries of victims are given more weight. People who commit crimes and people who are hurt by them are the most important people in any crime case. This type of justice is meant to help people change, and it is a form of "Nyaya."

15. insurrection: Subsection 124-A of Chapter VII of the BNS adds or changes something

⁸ P.S.D. Seshadri, *The Indian Penal Code: A Study in Colonialism and Law*, in *Law, Justice, and the Constitution* 30 (P. S. D. Seshadri ed., 2010).

important about the crime of insurrection that was in the IPC. Crimes against the State are covered in Chapter VII of the BNS. The word "sedition" from the colonial era has been taken out and replaced with Section 152 of the BNS, which defines it as acts that threaten the sovereignty, unity, or integrity of India and carry a fine or prison sentence of up to seven years. The new section raises the highest sentence from seven years to life in prison. Section 124-A of the IPC punished anyone who hated, insulted, or stirred up dislike for the Indian government, which is required by law. The severity of the crime is increased by Section 152, which includes using electronic contact or money to carry out any "subversive activities," support for "separatist activities," or to put India's sovereignty, unity, or integrity.

16. Sexual Activity Through Tricks or Other Unfair Means, etc⁹. The BNS makes it illegal to have sexual relations by lying or other dishonest means. Part V of the Sanhita talks about it. Section 69 says that anyone who lies to a woman or promises to marry her and then has sexual relations with her under the guise of marriage will be jailed for up to ten years and have to pay a fine. Once upon a time, it was illegal as part of rape, but the BNS has taken the important step of separating it from rape. The "lie" in the promise is what's being looked at, and the fake promise to marry can't be compared to other types of rape.

17. Being aware of hit-and-run cases The BNS section 106(2) talks about "death by negligence." Should a driver kill someone while driving carelessly and quickly, and that driver does not report the accident to the police or a magistrate right away, they will be fined and sent to jail for up to ten years.

CHAPTER V

New Provisions of The Bharatiya Nyaya Sanhita, 2023:

<u>SECTION</u>	<u>HEADING</u>
2(3)	“Child”
4(f)	Punishment- Community Service
48	Abetment outside India for offence in India
69	Sexual intercourse by employing deceitful means, etc.
70(2)	Gang Rape
95	Hiring, employing or engaging a child to commit an offence

⁹ Ministry of Law and Justice, Government of India, National Policy for Criminal Justice Reforms (2020).

96	Procuration of child
103(2)	Punishment for murder
106(2)	Causing death by negligence
111	Organised Crime
112	Petty organized crime
113	Terrorist Act
117(3)/(4)	Voluntarily causing grievous hurt
152	Act endangering sovereignty, unity and integrity of India
195(2)	Assaulting or obstructing public servant when suppressing riot, etc
197(1)(d)	Imputations, assertions prejudicial to national integration
226	Attempt to commit suicide to compel or restrain exercise of lawful power 304
324(3)	Mischief
341(3)/ (4)	Making or possessing counterfeit seal, etc., with intent to commit forgery punishable under Section 338
358	Repeal and Savings

• **Provisions of Penal Code, 1860 Omitted in Bharatiya Nyaya Sanhita, 2023**

<u>SECTION</u>	<u>HEADING</u>
14	Servant of Government
18	India
20	Court of Justice
38	Persons concerned in criminal act may be guilty of different offences
50	Section
53-A	Construction of reference to transportation
124-A	Sedition
153-AA	Punishment for knowingly carrying arms in any procession or organising, or holding or taking part in any mass drill or mass training with arms
232	Counterfeiting Indian coin
236	Abetting in India the counterfeiting out of India of coin
237	Import or export of counterfeit coin
238	Import or export of counterfeit of Indian coin
247	Fraudulently or dishonestly diminishing weight or altering composition of Indian coin

249	Altering appearances of Indian coin with intent that it shall pass as coin on different description
264	Fraudulent use of false instrument for weighing
265	Fraudulent use of false weight or measure
266	Being in possession of false weight or measure
267	Making or selling false weight or measure
309	Attempt to commit suicide
310	Thug
311	Punishment
366-A	Procuration of minor girl
376-DA	Punishment for gang rape on woman under 16 years of age
376-DB	Punishment for gang rape on woman under 12 years of age
377	Unnatural Offences
444	Lurking house-trespass by night
446	House-breaking by night
497	Adultery

CHAPTER VI

CONCLUSION

The change from the Indian Penal Code (IPC) from the colonial era to the proposed Bharatiya Nyaya Sanhita (BNS) shows how India's law system has changed over time. An example of

The study shows the big differences between the two, which shows that the criminal justice system needs to be completely reformed. The Indian Penal Code (IPC) is a product of its time. It is harsh and hierarchical like colonial law, and it can't handle modern, complicated crimes. The BNS, on the other hand, focusses on human rights, community-based projects, and restorative justice as a way to change things. There are important gaps between the basic ideas, The BNS also takes into account how crime changes over time by including new issues like organised crime, economic crimes, and hacking. For these changes to work, they need to be put into action well, have enough money, and keep the political will going. To find potential problems and come up with ways to fix them, the present criminal justice system needs to be carefully looked at. The BNS will also need to be evaluated and watched over on a regular basis to make sure it works well and can be changed to meet new challenges.

The change from the Indian Penal Code (IPC) to the Bharatiya Nyaya Sanhita (BNS) is a big step forward for the biggest democracy in the world. It has a court system that listens to what its people want and puts the rights of the accused and the needs of victims first, making society more fair and just for everyone.

In the end, the BNS could completely change Indian criminal justice, creating a more fair and effective legal system that fixes the problems of today and builds on the successes of yesterday. what the two codes say and how they are organised. In contrast to the IPC's complicated and sometimes unclear rules, the BNS puts applicability, accessibility, and clarity first. The proposed Bharatiya Nyaya Sanhita (BNS) would replace the Indian Penal Code (IPC). This is a big change in India's criminal justice system because it will move away from rules from the colonial era and towards a more modern, human rights-based approach. The IPC was made in 1860, when India was a British colony. It was meant to work with a hierarchical society by enforcing harsh punishments and focussing on keeping order instead of supporting justice. Over time, it became clear that the IPC's structure wasn't up to the task of dealing with the complicated issues of crime and society today.

The BNS, on the other hand, supports a more open and progressive attitude to criminal justice. It tries to find a balance between the accused's rights and the victim's needs. It wants justice to be more about making things right than just getting revenge. The BNS is designed to be easier to understand and get to than the IPC. It is based on ideas like fairness, openness, and protecting human rights. The IPC's rules were often unclear and hard to understand. The BNS, on the other hand, focusses on being clear and useful, which makes it easier for everyone, including lawyers, to understand and follow.

One of the best things about the BNS is that it focusses on current types of crime that the IPC didn't think of, like organised crime, cybercrime, and economic crimes. Because of changes in technology and globalisation, these kinds of crimes have become more common, and the IPC isn't set up to deal with them. The BNS wants to close this gap by treating these new problems directly and adding tools for restorative justice, community-based projects, and a more humane way of punishing people.

But in order for the BNS to really work, its rules must be carefully carried out with enough resources. To do this, the current criminal justice system needs to be completely redesigned.

This includes training police and judges, as well as making new methods for dealing with complex crimes like cybercrime. The BNS will also only work if there is strong political will and a dedication to making sure that the system adapts to changing social needs.

The BNS also stresses the importance of regular review and control to make sure that its rules stay useful and relevant over time. This ability to change with the times is very important in a world that is always changing and where new types of crime and social problems are always coming up. It is also important that the BNS stays adaptable enough to deal with new problems while still upholding its core values of fairness, justice, and human rights.

Finally, the change from the IPC to the BNS is a big step forward for India's criminal justice system. It moves away from the harsh, punitive rules that were in place during colonialism and towards a more fair, progressive system that puts protecting rights and helping criminals get back on their feet. The BNS has the ability to completely change India's criminal justice system, making it more fair, efficient, and humane. It can also handle problems that come up in the future. The BNS is a forward-looking method that tries to build on past successes while fixing past problems. It does this by focussing on clarity, accessibility, and how crime is changing.

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