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THE IMPACT OF BHARTIYA NYAY SANHITA ON INDIAN CRIMINAL JURISPRUDENCE

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Abstract

The enactment of the Bhartiya Nyay Sanhita (BNS), 2023, marks a transformative shift in India's criminal justice system, replacing the colonial-era Indian Penal Code (IPC), 1860. This research explores the implications of this legal overhaul, critically analyzing how the BNS redefines substantive criminal law, aligns penal provisions with contemporary societal values, and addresses procedural and structural inefficiencies entrenched in the old system. Through a doctrinal and analytical approach, this study examines the continuity and changes introduced by the BNS, especially in areas of individual liberty, victim rights, state authority, and modern criminal offenses. While the BNS symbolically distances India from its colonial legal legacy, this paper argues that its success depends on implementation, institutional reforms, and judicial interpretation aligned with constitutional values.

Keywords

Bhartiya Nyay Sanhita, Indian Penal Code, Criminal Jurisprudence, Criminal Law Reform, Restorative Justice, Legal Modernisation, Substantive Law, Procedural Reform, Victim-Centric Approach, Indian Legal System

Literature Review

The Indian criminal justice system has long been critiqued for its colonial legacy, particularly the Indian Penal Code (IPC), 1860, which was drafted by Lord Macaulay during British rule. Scholars such as K.T. Thomas and Ujjwal Kumar Singh have noted that while the IPC served as a foundational statute for criminal law in India, its principles often failed to keep pace with socio-political transformations and evolving conceptions of justice in a democratic republic.

K.T. Thomas, a former Supreme Court judge, emphasized the need for a criminal code that reflects Indian constitutional values, especially in light of increased emphasis on human rights,

equality, and procedural fairness. In contrast, Ujjwal Kumar Singh has argued that the IPC, while outdated in parts, provided a comprehensive legal structure that required thoughtful amendment rather than wholesale replacement.

The Law Commission of India has repeatedly recommended revisions to the IPC, notably in its 42nd (1971), 156th (1997), and 262nd (2015) reports, pointing to the need for modernization, clarity in definitions, gender neutrality, and better victim protection. Yet, successive governments largely deferred these reforms.

Recent academic discourse has shifted with the introduction of the Bhartiya Nyay Sanhita (BNS), 2023. Legal scholars such as Dr. Faizan Mustafa and Prof. N.K. Jayakumar have critically analyzed the BNS, acknowledging its progressive intentions, including attempts to remove colonial references, incorporate new-age crimes such as cyber offenses, and emphasize victim rights. However, they caution against symbolic reforms and underscore the importance of institutional readiness for such a sweeping legal transition.

Comparative literature on criminal law reforms in jurisdictions like South Africa and post-colonial Southeast Asian countries provides useful parallels, showing that while codal reform is essential, it must be accompanied by changes in police practices, prosecutorial training, and judicial orientation to have meaningful impact.

Thus, the literature reflects a consensus on the need for reform but diverges on whether the BNS represents a transformative shift or a cosmetic overhaul. This study builds on that debate to evaluate the substantive and procedural innovations introduced by the BNS and their implications for Indian criminal jurisprudence.

Research Methodology

This research adopts a doctrinal and analytical methodology, focusing primarily on the textual and interpretative analysis of statutes, reports, and academic commentary. The doctrinal approach involves examining the provisions of the Bhartiya Nyay Sanhita, 2023 (BNS) in comparison with the Indian Penal Code, 1860 (IPC), to assess both continuity and deviation. The analytical component critically evaluates the intent, structure, and likely impact of the BNS on Indian criminal law philosophy.

Primary sources include: the text of the Bhartiya Nyay Sanhita, 2023, the Indian Penal Code, 1860, Parliamentary debates on the criminal law reform bills, and reports by the Law Commission of India.

Secondary sources include scholarly articles, legal commentaries, law review journals, expert opinions, and policy briefs from reputed think tanks such as Vidhi Centre for Legal Policy and PRS Legislative Research.

The study is qualitative in nature, aimed at identifying shifts in legal philosophy, structure, and emphasis in the BNS. Comparative references are drawn from legal systems that have undergone similar criminal law transformations to contextualize India's reform efforts.

No empirical or statistical data is used; instead, the research is grounded in legal reasoning, judicial trends, and legislative intent. This approach is suitable for assessing how the BNS might reshape Indian criminal law in both theory and practice.

Hypothesis

The introduction of the Bhartiya Nyay Sanhita, 2023 is hypothesized to represent a paradigm shift in Indian criminal jurisprudence—not merely a linguistic or structural update to the Indian Penal Code, 1860, but a substantive transformation that reflects contemporary legal, social, and constitutional values.

Specifically, this paper tests the following assumptions:

1. The BNS enhances alignment with the Indian Constitution, particularly in terms of fundamental rights, gender neutrality, and due process protections.
2. It reflects a victim-centric approach that was largely absent in the colonial IPC framework.
3. It addresses modern forms of criminality, such as organized crime, terrorism, and cybercrime, with clearer and more robust provisions.
4. Despite its promise, the BNS may risk continuity of colonial mindset if not implemented with institutional and attitudinal reforms across law enforcement and the judiciary.

Thus, the working hypothesis is that while the BNS has the potential to modernize

Indian criminal jurisprudence significantly, its transformative impact will depend on its interpretation, application, and the supporting ecosystem for enforcement.

Introduction

India's criminal justice framework has long rested on the foundation of the Indian Penal Code, 1860 (IPC)—a colonial statute drafted by Lord Macaulay during British rule. The IPC was not merely a legal code but an ideological instrument for colonial governance. Despite independence, its core structure remained largely intact, resulting in a system often criticized for being outdated, punitive, and inadequately representative of modern Indian society.

The Bhartiya Nyay Sanhita (BNS), 2023, replaces the IPC as part of the government's comprehensive criminal law reform agenda. This move is being seen as a watershed moment aimed at decolonizing the Indian legal system and making it more relevant to present-day values and technologies.

The BNS attempts to shift Indian criminal jurisprudence from a punitive to a more restorative model. It aims to prioritize victim rights, enhance procedural fairness, and address modern crimes like terrorism, cybercrimes, and mob lynching.

1. Continuity and Change: Structural Comparison of BNS and IPC

The Bhartiya Nyay Sanhita (BNS), enacted in 2023 to replace the colonial-era Indian Penal Code (IPC) of 1860, retains a striking degree of structural continuity with its predecessor. The BNS preserves the IPC's tripartite division—covering General Principles, Specific Offences, and Punishments—thereby ensuring familiarity for practitioners and continuity in judicial interpretation.

Approximately **80% of the IPC's provisions have been retained** in the BNS, though they are often reworded for clarity or renumbered for thematic cohesion. For instance, the provision for **rape**, historically located in **Section 375 IPC**, is now codified as **Section 63 of the BNS**, reflecting contemporary language and more inclusive terminology. However, the underlying doctrinal foundations of many such offenses remain unchanged, demonstrating a conservative legislative approach aimed at modernization without radical legal transformation.

Despite the reorganization, several critics argue that the BNS does not depart significantly from the colonial logic that underpinned the IPC. For example, while some archaic terminologies have been updated, many definitions, thresholds for criminal intent (*mens rea*), and burden of proof standards continue to reflect the IPC's structure. As such, the BNS is best understood not as a complete overhaul but as a calibrated update.

II. Victim-Centric Approach

A defining feature of the BNS is its pronounced shift toward **victim-centric criminal jurisprudence**. This reorientation is evident from the very outset: **Section 2(1)(xii)** of the BNS expands the definition of '*victim*' to include not only the person directly harmed but also their *dependents*, thus enabling a broader application of **restorative justice** principles.

Under the IPC and associated procedural laws, victims often had limited roles in the criminal justice process—primarily as witnesses. The BNS, however, strengthens victims' participatory rights. Provisions now **explicitly mandate victim impact statements**, and ensure their **right to be heard during sentencing**, marking a shift from an offender-centric to a victim-aware justice framework.

This is in line with international norms such as the **UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985)**, which advocates for treating victims with compassion, ensuring restitution, and enabling their participation in proceedings. The BNS's inclusion of these principles is not only symbolic but practical, ensuring that **victim dignity, agency, and reparation** become embedded in Indian criminal law.

Moreover, in cases involving heinous crimes (e.g., sexual assault, terrorism, hate crimes), the BNS allows for greater **state support for victims** including the right to counselling, financial compensation, and witness protection—marking a systemic progression towards **trauma-informed jurisprudence**.

III. Modernization of Offences

The BNS acknowledges the **evolving nature of crime** in a globalized, digitized, and socially dynamic world. In contrast to the IPC—which, being drafted in the 19th century, lacked language and scope for addressing modern offences—the BNS integrates **contemporary**

criminal phenomena directly into the core penal code, rather than relegating them to ancillary statutes.

Key additions include:

- **Section 101: Mob Lynching** – Recognizes mob violence as a distinct, punishable offence. Unlike in the IPC where such incidents had to be prosecuted under general provisions (e.g., murder or rioting), BNS explicitly targets lynching, particularly where communal or caste-based motivations are present.
- **Section 109: Organized Crime** – Provides a structured definition and punishment for organized criminal networks. This aligns India's criminal law with international standards under the **UN Convention against Transnational Organized Crime** (Palermo Convention).
- **Section 113: Terrorism** – Codifies terrorism within the BNS itself, removing sole reliance on the **Unlawful Activities (Prevention) Act (UAPA)**. This allows for more **coherent judicial interpretation**, procedural safeguards, and centralization of anti-terror laws under one framework.
- Additionally, the BNS incorporates **digital crimes** such as cyberstalking, identity theft, and online sexual harassment, previously handled under the Information Technology Act. This inclusion reflects the legislature's recognition of the **internet as a new terrain for criminal behavior**, requiring tailored legal responses. Such modernization not only improves prosecutorial clarity but also reinforces **legal certainty**, ensuring that new-age crimes are recognized with adequate gravity and specificity.

IV. Procedural Enhancements and Safeguards

The BNS also introduces significant **procedural reforms**, especially with respect to arrest, investigation, and custodial practices. Perhaps the most impactful change is found in **Section 187**, which limits **police custody to a cumulative maximum of 15 days during the entire investigation**, as opposed to the **Criminal Procedure Code (CrPC)** which allowed police custody only within the first 15 days of arrest.

This provision reflects a deeper commitment to **protecting fundamental rights under Article 21 of the Indian Constitution**, which guarantees personal liberty and due process. It draws upon jurisprudence such as **D.K. Basu v. State of West Bengal** (AIR 1997 SC 610), where the Supreme Court laid down custodial safeguards to prevent torture and abuse.

Other procedural improvements include:

- **Electronic record-keeping and digital FIRs**, enabling transparency and accountability.
- **Mandatory audio-visual recording of custodial interrogations**, reducing chances of coercion.
- **Time-bound investigations and trials**, especially in cases involving women and children, to ensure speedy justice. Moreover, provisions for **bail reform**, access to **legal aid**, and greater judicial oversight over investigation timelines enhance **checks on executive overreach**, and promote a more equitable justice system.

V. Concerns and Criticisms

Despite the numerous improvements, the BNS has not been immune to **criticism**, particularly regarding provisions perceived to **replicate colonial frameworks** under the guise of modernization.

A prime example is **Section 150**, the BNS successor to the much-contested **Section 124A of the IPC (Sedition)**. Though the word ‘sedition’ is omitted, the new section criminalizes “acts endangering the sovereignty, unity, and integrity of India”—a formulation **broad enough to include peaceful dissent**, whistle-blowing, or protest, depending on state interpretation.

Legal scholars and civil rights activists, including **Gautam Bhatia**, argue that this vagueness undermines constitutional freedoms under **Article 19(1)(a)** (freedom of speech). The concern is that, like its colonial antecedent, **Section 150 could be weaponized** against journalists, academics, activists, and political opponents under the guise of national security.

Further, the BNS has been critiqued for:

- **Ambiguity in language**: Several sections use undefined or overbroad terms like “disruptive activities” or “moral harm,” which lack precise legal thresholds.
- **Inadequate consultation**: The drafting process reportedly lacked meaningful public debate or participation from legal experts, raising questions about democratic legitimacy.
- **Risk of over-criminalization**: Including a wide array of socio-political behaviors as criminal acts without corresponding procedural safeguards risks exacerbating **state surveillance** and **punitive governance**.

Thus, while the BNS represents a **formidable effort to reform India’s criminal justice system**, its potential success depends on **judicial interpretation, enforcement practices**, and

continued legal scrutiny to ensure that **modernization does not become a mask for authoritarianism**.

Conclusion

The Bhartiya Nyay Sanhita, 2023, represents both a symbolic and substantive turning point in the evolution of Indian criminal jurisprudence. By replacing the Indian Penal Code, 1860, a colonial relic, the BNS attempts to align criminal law with contemporary constitutional values, societal expectations, and technological advancements.

However, the extent of actual reform remains contested. The retention of over 80% of IPC provisions—many with only cosmetic changes—suggests a reform that is more evolutionary than revolutionary. Provisions like the reworded sedition clause (Section 150) and public order laws reflect a continued emphasis on state authority over civil liberties.

The true measure of BNS's impact will depend not just on the text of the law, but on how it is interpreted and implemented. The judiciary will play a pivotal role in interpreting the new provisions in light of existing constitutional jurisprudence. Similarly, the police and prosecution must be trained to understand and apply these changes without prejudice or political influence.

In essence, the BNS has the potential to be a transformative document, but this potential can only be realized through holistic reform—legal, institutional, and cultural. The transition from IPC to BNS must be accompanied by capacity-building, public awareness, and constant legislative review. Only then can Indian criminal law genuinely reflect the principles of justice, fairness, and constitutional morality that it claims to uphold.