

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi-Disciplinary
Peer Reviewed

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume II Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

EDITORIALTEAM

EDITORS

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board



Dr. Namita Jain

Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi. (2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019



Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr.Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8Articles in various reputed Law Journals. Conducted 1Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

THE IMPERATIVE FOR BHARATIYA NYAYA SANHITA (BNS) IN CONTEMPORARY INDIA: A COMPARATIVE ANALYSIS WITH THE INDIAN PENAL CODE (IPC)

AUTHORED BY - BLEIMY T JOSE

LLM Student, Government law college, Ernakulam,

The dynamic nature of law necessitates its evolution in tandem with the changing demands and circumstances of society. In a democratic setup, laws are deeply rooted in public opinion, reflecting the values, struggles, and aspirations of the people¹. The criminal justice system, in the same way, requires periodic revisions to remain effective and relevant. The recent replacement of the Indian Penal Code (herein after referred as IPC), Code of Criminal Procedure (CrPC), and the Indian Evidence Act with the Bharatiya Nyaya Sanhita (herein after referred as BNS), Bharatiya Nagarik Suraksha Sanhita (BNSS), and the Bharatiya Sakshya Adhinyam (BSA) respectively, underscores the need for a modernized legal framework. This is a historic event in independent India. The act of decolonising the penal law needs to be understood as a shift in perspective from ‘colonial criminal values’ to ‘Constitution oriented criminal values’². Through a comparative analysis with the IPC, this article assesses the efficacy of the Bharatiya Nyaya Sanhita (BNS) in tackling crime and prescribing punishments that meet the needs of modern India, and discusses the potential limitations of the BNS.

FROM ANCIENT ROOTS TO MODERN BNS

India’s criminal justice system has undergone a long journey of evolution, with its foundation deeply rooted in ancient civilizational values. The earliest notions of justice in India were influenced by the principle of ‘Dharma’, derived from sacred texts such as the Puranas and Smritis, which served as interpretative extensions of the Vedas. Dharma emphasized moral conduct, righteous duty, and societal order—forming the basis for early legal and ethical standards. During the Mauryan period, India witnessed a strict and structured penal system, characterized by severe punishments, including mutilation and death penalties. However, the

¹ NITESH GARG “LAW AS AN INSTRUMENT OF SOCIAL CHANGE” International Journal of Novel Research and Development (IJNRD), Available at: <https://www.ijnrd.org> > papers > IJNRD2404249 (Last visited on June 10, 2025)

² Dr. Neeraj Tiwari “Decoding the Bharatiya Nyaya Sanhita, 2023: Indianization of the Colonial Penal Law” 71 *The Indian Police Journal* (2024) Available at: <https://bprd.nic.in> > uploads > pdf (Last visited on June 11, 2025)

subsequent Gupta era brought a more nuanced and organized approach to justice, where judicial functions were distributed among guilds, local assemblies, councils, and ultimately the king. This period marked a shift toward a semi-democratic system of dispute resolution with more community participation. The medieval period, influenced by various invasions and especially the Mughal rule, introduced further modifications to India's criminal jurisprudence. Offences during this period were largely classified based on the nature of penalties—such as Qisas (retaliation), fines, imprisonment, and discretionary punishments for theft, robbery, and other crimes. While these changes brought new dimensions to the justice system, they also introduced a mix of customary and foreign legal principles³.

A major turning point of Criminal Justice System in India, came with British colonial rule, which systematically codified Indian criminal law to serve administrative convenience and imperial control. The most significant development was the drafting of the Indian Penal Code (IPC) in 1860. Initiated under the first Law Commission led by Lord Macaulay, the initial draft of the IPC was prepared in 1837. However, it underwent multiple revisions and delays—especially due to the 1857 Revolt—before it was finally enacted in 1860 and came into force on 1 January 1862. The IPC became the cornerstone of criminal law in British India, unifying diverse regional laws (excluding princely states) under a single code. Over time, the IPC was complemented by the Indian Evidence Act (IEA), 1872, and later, the Code of Criminal Procedure (CrPC), 1973, establishing a comprehensive framework for criminal justice in India. Despite its utility, the IPC has significant limitations in the present context such as it reflects colonial objectives rather than democratic ideals, with outdated provisions that fail to account for modern crimes like cybercrime and terrorism. The code's procedural rigidity leads to massive case pendency and judicial delays, while its emphasis on procedure over justice neglects the rights of victims. Furthermore, the IPC's limited integration with modern technology and digital processes hinders its effectiveness. These limitations underscore the need for a more modern and responsive legal framework, which the new laws aim to provide. Over the years, numerous expert bodies—including the Law Commission of India and special committees like the Malimath Committee, Madhava Menon Committee, Bezbaruah Committee, and Vishwanathan Committee—have highlighted the urgent need for reform in India's criminal justice system. However, these recommendations resulted largely in piecemeal

³ Abhijeet Nandy “Historicizing the criminal justice administration in India: tracing its evolution in British colonial era of 1757-1947” 7 *NUJS Journal of Regulatory Studies*, Available at: <https://www.nujs.edu › uploads › 2023/04 › Vol-7> (Last visited on 11 June, 2025)

amendments rather than a holistic overhaul.

However, recognizing these long-standing issues, the Indian government introduced a historic legislative package in December 2023, aimed at revamping the entire criminal law framework. This includes, Bharatiya Nyaya Sanhita (BNS), 2023 (replacing the IPC, 1860), Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 (replacing the CrPC, 1973), Bharatiya Sakshya Adhinyam (BSA), 2023 (replacing the IEA, 1872). These bills were introduced and passed by both Houses of Parliament on 21 December 2023, marking a landmark shift in Indian legal history. The objective is to make the justice system more citizen-centric, efficient, transparent, and technology-driven.

COMPARISON BETWEEN IPC AND BNS: STRUCTURE AND KEY CHANGES BNS - Details⁴

Act	The Bharatiya Nyaya Sanhita, 2023 (BNS)
Name/Short Title	
Long Title	An Act to consolidate and amend the provisions relating to offences and for matters connected therewith or incidental thereto.
Act No.	45
Act Year	2023
Enactment Date	25 December 2023
Ministry	Ministry of Law and Justice
Department	Legislative
Enforcement Date	1 July 2024

⁴ Overview of Bharatiya Nyaya Sanhitha, 2023, Writing law, Available at: <https://www.writinglaw.com> > Law Notes (Last visited on 11 June, 2025)

Repealed Act The Indian Penal Code, 1860 (45 of 1860)

The Indian Penal Code (IPC) originally consisted of 23 chapters and 511 sections. Later, three additional chapters—VA, IXA, and XXA—were added, increasing the total to 26 chapters. With the introduction of the Bharatiya Nyaya Sanhita (BNS), a comprehensive restructuring was undertaken. Contents from 25 of the 26 IPC chapters have been reorganized and incorporated into the BNS, which now consists of 358 provisions across 20 chapters as follows

- Chapter 1 – Preliminary (Sections 1 to 3)
- Chapter 2 – Punishments (Sections 4 to 13)
- Chapter 3 – General Exceptions (Sections 14 to 44)
- Chapter 4 – Abetment, Criminal Conspiracy and Attempt (Sections 45 to 62)
- Chapter 5 – Offences Against Woman and Child (Sections 63 to 99)
- Chapter 6 – Offences Affecting the Human Body (Sections 100 to 146)
- Chapter 7 – Offences Against the State (Sections 147 to 158)
- Chapter 8 – Offences Relating to the Army, Navy and Air Force (Sections 159 to 168)
- Chapter 9 – Offences Relating to Elections (Sections 169 to 177)
- Chapter 10 – Offences Relating to Coin, Currency-Notes, Bank-Notes, and Government Stamps (Sections 178 to 188)
- Chapter 11 – Offences Against the Public Tranquility (Sections 189 to 197)
- Chapter 12 – Offences by or Relating to Public Servants (Sections 198 to 205)
- Chapter 13 – Contempt of the Lawful Authority of Public Servants (Sections 206 to 226)
- Chapter 14 – False Evidence and Offences Against Public Justice (Sections 227 to 269)
- Chapter 15 – Offences Affecting the Public Health, Safety, Convenience, Decency and Morals (Sections 270 to 297)
- Chapter 16 – Offences Relating to Religion (Sections 298 to 302)
- Chapter 17 – Offences Against Property (Sections 303 to 334)
- Chapter 18 – Offences Relating to Documents and to Property Marks (Section 335 to 350)
- Chapter 19 – Criminal Intimidation, Insult, Annoyance, Defamation, etc. (Section 351 to 357)
- Chapter 20 – Repeal and Savings (Section 358)

Comparative statistics of the content⁵

The table below presents the statistical comparative analysis of both IPC and BNS:

DESCRIPTION	IPC	BNS
Original number of sections	511	358
Sections inserted in old laws [within the original numbering scheme] through successive amendments	64	-
Number of sections repealed through successive amendments	21	-
Total number of sections in old laws immediately before 1st July, 2024 [within the original numbering scheme]	554	-
Sections of old laws not included in new laws	19	-
Sections of old laws which are included in new laws	535	-
Sections of old laws included as individual sections in new laws	287	287
Contents of sections of old laws reorganised within individual sections of new laws	248	61
Newly added sections in new laws	-	10

⁵ Anil Kishore Yadav “Overview of New Criminal Major Acts, 2023” 71 *The Indian Police Journal* (2024) Available at: <https://bprd.nic.in/uploads/pdf>, (Last visited on 11 June 2025)

SUMMARY OF IMPORTANT REFORMS OF BNS

➤ Comprehensive reorganisation of IPC

One of the most notable reforms of BNS, as compared to IPC, is the systematic reorganisation of provisions, addressing the structural limitations of the IPC. In the IPC, definitions were dispersed across various sections (Sections 8 to 52A) under the chapter titled “General Explanations”. This scattered nature of definitions often led to interpretational challenges and legal ambiguities. The BNS resolves this issue by consolidating all definitions under a single Section 2, comprising 39 sub-sections arranged in alphabetical order. This restructured approach makes definitions more accessible and user-friendly for legal practitioners, scholars, and enforcement agencies alike.

In terms of chapter arrangement, the BNS introduces further simplification. Chapter I (Introduction) and Chapter II (General Explanations) of the IPC have now been merged into Chapter I (Preliminary) of the BNS, thereby streamlining the foundational principles and definitions of criminal law. Similarly, Chapter V (Abetment) and Chapter VA (Criminal Conspiracy) have been unified into Chapter IV of the BNS, which is now titled “Of Abetment, Criminal Conspiracy, and Attempt”. This consolidation ensures that all inchoate offences—those involving preparatory or incomplete criminal acts—are addressed comprehensively within a single chapter, enhancing both legal clarity and pedagogical value.

A particularly significant reform in the BNS is its focus on vulnerable groups, particularly women and children. A newly introduced Chapter V, titled “Of Offences Against Women and Children”, has been specifically created to reflect the legislature’s intent to prioritise the protection of these groups. This chapter consolidates provisions that were previously scattered across multiple IPC chapters—including Chapters XI, XVI, XX, XXA, and XXII—into a coherent and focused legal framework. This thematic integration strengthens the legal response to crimes against women and children and facilitates more effective implementation and enforcement.

Along similar lines, the BNS has restructured and given prominence to offences affecting the human body. The newly designated Chapter VI encompasses a wide array of serious crimes impacting human life and physical integrity. This chapter incorporates several newly introduced offences, such as mob lynching, organised crime, petty organised crime, and terrorist acts—offences that were either previously unaddressed or insufficiently defined under

the IPC. This reform reflects an evolving understanding of the complexities of modern crime and the need for more targeted penal responses.

Another area of significant change is the reorganisation of economic and currency-related offences. Under the IPC, Chapter XII, dealing with offences relating to coins and government stamps, was expansive, comprising 26 sections. In the BNS, these have been streamlined into just four sections (Sections 178 to 181), demonstrating an effort to simplify the law without compromising its substance. Additionally, these four sections now incorporate related offences from Chapter XVIII of the IPC (Sections 489A to 489D), thereby consolidating all currency and counterfeiting-related offences into a single, cohesive framework. The BNS also omits certain outdated or redundant provisions. Notably, Chapter XIII of the IPC, which dealt with offences related to weights and measures, has been excluded entirely. This exclusion is justified on the basis that such matters are now comprehensively regulated by the Legal Metrology Act, 2009, making their inclusion in the penal statute unnecessary.

Overall, by reorganising, updating, and consolidating the IPC's provisions, the BNS seeks to create a more coherent, accessible, and contemporary criminal code. It upholds the substantive essence of Indian criminal law while ensuring it remains relevant and responsive to modern societal challenges and constitutional values⁶.

➤ Modernised language or definitions

The BNS removed also outdated and colonial language and uniform terms have been adopted such as, "Minor" has been replaced with "child" and "insane" with "person with unsound mind. A new definition of "child," meaning any person below the age of eighteen years, has been added under Section 2(3), aligning with this definition in Section 2(12) of the Juvenile Justice Act, 2015. Under Section 2(8) [IPC 29], the definition of "document" now also includes electronic and digital records. Under Section 2(10) [IPC 8], the definition of "gender" now also includes "transgender." Under Section 2(20) [IPC 49], the British Calendar is replaced by the Gregorian calendar. Under Section 2(21) [IPC 22], the scope of "movable property" has been greatly expanded by removing the adjective "corporeal." Section 2(39) [IPC 29A], with regard to electronic records, expands the scope by providing that words and expressions used but not defined in BNS but defined in the Information Technology Act, 2000, and the BNSS shall have

⁶ Ibid

the meanings respectively assigned to them therein. Section 48 defines abetment outside India for offence in India.

- Expanded jurisdiction - Section 48 introduces a critical provision regarding abetment committed outside India for offences that occur within Indian jurisdiction. This helps bridge cross-border legal gaps in criminal liability and enforcement.
- Newly added sections/offences –

The Bharatiya Nyaya Sanhita (BNS) signifies a transformative phase in India's criminal justice system by incorporating numerous newly defined offences and sections, which were either unaddressed, ambiguous, or absent in the Indian Penal Code (IPC). These additions are not mere textual changes but represent a substantive policy shift to address emerging crimes, societal harms, and contemporary criminal patterns. The inclusion of these new provisions reflects a proactive legislative approach in adapting the criminal law to the demands of a rapidly evolving society.

One of the noteworthy additions is Section 69, which criminalises sexual intercourse by employing deceitful means, particularly to secure consent through false promises or impersonation. This addresses a long-standing grey area in consent jurisprudence and expands the scope of protection for victims of sexual abuse. Section 95 introduces a specific offence for hiring, employing, or engaging a child to commit an offence, thereby strengthening child protection laws and aligning them with international obligations under child rights conventions.

A progressive development is seen in Section 103(2), which defines murder committed by a group of five or more persons acting in concert based on discriminatory grounds such as race, caste, sex, religion, language, or personal belief. This directly addresses hate crimes and mob violence, which have been increasingly reported in recent years. Section 106 introduces two new sub-clauses:

- 106(1) penalises causing death by negligence by a registered medical practitioner, which is a crucial reform balancing medical accountability without creating undue fear among professionals.
- 106(2) criminalises death caused by rash and negligent driving (hit and run) where the offender escapes without informing authorities—addressing a major loophole in traffic offence laws.

The BNS further reflects the need to tackle organised criminal activity with Sections 111 and 112, which define and criminalise organised crime and petty organised crime respectively. These offences often operate below the radar of traditional criminal law but have severe implications for public order and economic stability.

In another significant departure, Section 113 introduces a statutory definition of terrorist acts—an area previously covered solely under special laws like the Unlawful Activities (Prevention) Act, 1967 (UAPA). By bringing it into the general penal law, BNS makes it easier for authorities to prosecute such acts while specifying that registration of cases under this section shall only be decided by a Superintendent of Police or higher, thereby preventing misuse.

Section 117(3) and 117(4) further augment the legal framework around grievous hurt:

- The former criminalises grievous hurt leading to permanent disability or a persistent vegetative state.
- The latter addresses grievous hurt inflicted by a mob, particularly when motivated by discriminatory or communal grounds.

National security receives robust reinforcement under Section 152, which penalises acts endangering the sovereignty, unity, and integrity of India, and Section 197(1)(d), which targets the publication of false or misleading information with potential to harm the nation's security. The BNS also recognises new psychological forms of crime. Section 226 criminalises the attempt to commit suicide with the intention to compel or restrain lawful authority, a significant recognition of misuse in protest or coercive situations while maintaining a sensitive approach to mental health.

New categories of property offences have been carefully defined to address urban and technological crimes:

- Section 304 defines snatching as a standalone offence.
- Section 305(b) to 305(e) deal with various forms of theft—including vehicle theft, theft from a vehicle, theft of religious idols or icons, and theft of government property. These reflect the changing trends in theft-related crimes.

Further addressing counterfeiting, Section 341(3) penalises the possession of counterfeit seals, plates, or instruments, while 341(4) criminalises their fraudulent or dishonest use—vital in combating modern forms of forgery and fraud, including those in digital and administrative

contexts.

➤ Reforms in punishments

The Bharatiya Nyaya Sanhita (BNS) introduces significant reforms to the scheme of punishments, marking a shift towards proportionality, modernity, and social relevance in penal sentencing. These reforms are reflected in the following dimensions:

- **Introduction of Community Service as a Form of Punishment** - A notable innovation is the addition of community service under Section 4(f) as a recognised form of punishment. It is prescribed in six offences—five of which are non-cognizable, and one (Section 209) cognizable. Only Section 303(2) mandates community service as the sole punishment. For the rest, it serves as an alternative sentence.
- **Enhanced Imprisonment Terms** - The BNS significantly increases imprisonment terms for various offences, reflecting a sterner stance on serious crimes. A wide array of sections, both new and retained from IPC (e.g., Sections 67, 117, 304A, 370A, 406, 419), now provide for stricter penal consequences.
- **Introduction of Minimum Mandatory Imprisonment** - A major shift is the codification of minimum sentences in numerous provisions, particularly in newly introduced sections such as, Section 95 (child exploitation), Section 111 (organised crime), Section 113 (terrorist acts), Section 117(3) (grievous hurt causing disability), among others.
- **Reforms in Punishment by Fine**- Fines have been enhanced across 67 offences, and in many cases; Previously undefined fines have been clearly specified. These reforms reflect an intent to make financial penalties more effective and deterrent, especially for economic and administrative offences.
- **Abolition of Mandatory Death Sentences** - In line with the Supreme Court's decision declaring mandatory death sentences unconstitutional, BNS allows life imprisonment as an alternative to the death penalty in some offences. This ensures judicial discretion and reinforces the principles of proportional sentencing.
- **Enhanced Punishment for Repeat Offenders** - Section 303(2) provides stricter punishment for repeat theft convictions. Additionally, Section 13 (analogous to IPC 75) prescribes enhanced punishment for repeat offenders in offences under Chapters X and XVII where the sentence exceeds three years.

Through these reforms, the BNS introduces a balanced and progressive penal philosophy, combining reformative, deterrent, and proportional approaches. The expansion of non-

custodial sentencing, codification of minimum punishments, and elimination of colonial-era rigidity collectively demonstrate a modern rethinking of punitive justice in India.

➤ gender neutrality and to rationalise age-related provisions

The Bharatiya Nyaya Sanhita introduces key reforms to ensure gender-neutral application of criminal laws, replacing gender-specific terms with inclusive language.

The following offences, previously limited to female victims, are now gender-neutral:

- S. 76: Disrobing with criminal force (IPC 354B)
- S. 77: Voyeurism (IPC 354C)
- S. 96: Procuration of child (IPC 366A)
- S. 137(1)(b): Kidnapping (IPC 361)
- S. 141: Importation of child from abroad (IPC 366B)
- S. 164: Harboring deserter (IPC 136)

Other Key Changes include:

- The Marital Consent Age Raised: Age of consent within marriage increased from 15 to 18 years (S. 63 Exception 2).
- Expanded Scope for Gang Rape: Death penalty allowed for gang rape of minors under 18 (S. 70(2)); anticipatory bail barred.
- S. 295: Sale of obscene material redefined to apply to a “child” instead of “person under 20”.

These reforms reflect a progressive shift towards inclusivity, aligning criminal law with constitutional equality and child protection norms.

➤ other important reforms in BNS

The Bharatiya Nyaya Sanhita also broadens the scope of several existing offences to address contemporary challenges, as follows:

- S. 116(h): Grievous hurt now includes injuries causing suffering for 15 days (earlier 20), widening the applicability.
- S. 299 [IPC 295A]: Outraging religious feelings now includes actions committed “through electronic means”, adapting to digital contexts.
- S. 326(d) [IPC 433]: Mischief by fire, explosives, etc. expanded to include rail and aircraft, increasing protection across transport modes.

- S. 337 [IPC 466]: Forgery of court/public records now covers government-issued ID documents like Aadhaar and Voter ID.
- S. 353 [IPC 505]: Statements causing public mischief now includes “false information” and content spread via electronic means.

These changes reflect the BNS's focus on incorporating technological realities and enhancing legal safeguards in critical areas.

SHORTCOMINGS OF BNS

While the Bharatiya Nyaya Sanhita (BNS) represents a landmark step in criminal law reform, it is not without its shortcomings—an inevitability in any man-made legal framework. Despite its reformative intent, the BNS suffers from several critical flaws. These include ambiguities in legal language, inadequate gender sensitivity, potential overreach into civil liberties, and the failure to align with international human rights standards. A detailed examination of these issues is presented below under key thematic subheadings.⁷

1. Sexual Offences and Gender Bias

This section reflects major concerns in how BNS addresses sexual offences, often reinforcing patriarchal values rather than challenging them. A glaring omission is the failure to criminalize necrophilia, an act considered grossly immoral and unacceptable in any legal framework.

Further, the law's definition of consent, especially in cases where it is obtained under a promise of marriage or employment, is ambiguous. Section 69 could be misused to justify coercive relationships under a legal veil. The most serious concern is the continuing exemption of marital rape, which is retained in Exception 2 to Section 63. This upholds outdated norms and denies bodily autonomy and dignity to married women. Moreover, Section 84 displays gender bias, penalizing only those who entice a married woman, thus implying ownership of women by their husbands. Lastly, Section 88 restricts access to abortion, undermining the more liberal provisions under the Medical Termination of Pregnancy Act, thereby impacting women's reproductive rights.

⁷ Imran Wahab, “Shortcomings of the Bharatiya Nyaya Sanhita, 2023: An Analytical Perspective” *International Journal for Multidisciplinary Research (IJFMR)*, Available at: www.ijfmr.com, (Last visited on 11 June, 2025)

2. Sedition and Free Speech

Despite the removal of the colonial sedition law under Section 124A of the IPC, Sections 150 and 152 of BNS revive the spirit of sedition in a more insidious form. These provisions criminalize acts that “endanger sovereignty” or incite rebellion, but are phrased in such vague terms that they could be used to suppress political dissent, journalism, and protest. Section 152, in particular, can be misused against individuals who offer financial or verbal support to movements critical of the state, raising concerns over freedom of expression under Article 19 of the Constitution.

3. LGBTQ+ Rights and Sexual Autonomy

While Section 377 of the IPC, which criminalized homosexuality, has been repealed, BNS does not adequately protect LGBTQ+ individuals from non-consensual acts, particularly in same-sex scenarios. The law fails to address forced sodomy, even within a marital context, and there are no provisions that criminalize sexual assault on men and transgender persons. This leaves a significant population unprotected under the new legal regime.

4. Ambiguity and Over-Criminalization

The BNS contains several vague and overbroad provisions. Key terms like “defamation,” “obscenity,” and “modesty of a woman” are not clearly defined, opening the door to arbitrary interpretation and misuse by law enforcement. Additionally, criminalization of civil wrongs, such as defamation under Section 356, disregards the global trend of handling such matters through civil remedies. The law also fails to provide alternative dispute resolution mechanisms like plea bargaining or out-of-court settlements for minor economic offences, leading to unnecessary incarceration and judicial backlog.

5. Children and Criminal Responsibility

One of the most regressive aspects of the BNS is the retention of a low age of criminal responsibility. The law allows children as young as seven years old to be held criminally liable, in contrast with international standards set by the UN Committee on the Rights of the Child, which recommends a minimum age of 12. This undermines the principles of juvenile justice and child protection.

6. Motor Accidents and Self-Incrimination

Section 106(2) prescribes a punishment of up to 10 years for fleeing the scene after a fatal

accident. While aimed at deterring hit-and-run cases, it violates Article 20(3) of the Constitution, which protects against self-incrimination. The provision could discourage drivers from reporting accidents for fear of severe punishment, defeating the purpose of responsible reporting.

7. Organized Crime and Vagueness

Section 112 attempts to tackle organized crime but lacks clear definitions of what constitutes a “gang” or “group”. The provision does not offer a structured sentencing policy or proper guidelines for enforcement. This vagueness could result in discretionary abuse and may not be sufficient to address complex, tech-driven modern organized crimes.

8. Human Trafficking and Exploitation

Sections 143 and 144 attempt to criminalize trafficking and slavery-like practices but fall short due to poorly defined terminology. Words like “exploitation” and “slavery” are left open to interpretation. Psychological coercion, a common feature in human trafficking, is difficult to prove without proper legal guidelines. Moreover, penalties vary inconsistently between adult and child victims, and there is inadequate provision for victim rehabilitation and legal aid, making enforcement and justice delivery weaker.

9. Overlap with Special Laws

Several provisions in the BNS overlap with existing legislations like the Unlawful Activities Prevention Act (UAPA) and state laws like MCOCA (Maharashtra Control of Organized Crime Act). These overlaps create jurisdictional confusion and raise compliance burdens for investigating agencies. Moreover, BNS lacks important procedural safeguards like prior government sanction or appellate review, which are present in specialized legislations, thereby increasing the risk of misuse.

10. Sentencing and Judicial Discretion

Section 104 revives the mandatory death penalty for certain categories of murder, echoing the unconstitutional IPC Section 303. This is in direct violation of the Supreme Court’s ruling in *Mithu v. State of Punjab*⁸, which held that mandatory death sentences remove judicial discretion and violate fundamental rights. Furthermore, while community service is introduced

⁸ 1983 AIR 473

as an alternative punishment (Section 4(f)), no guidelines are provided for its execution, making it ineffective in practice. Similarly, despite ministerial assurances, BNS lacks legal provisions for leniency in cases of self-reporting in culpable homicide, defeating the reformist objectives of restorative justice.

11. Anti-Terrorism Provisions

Section 113 deals with terrorism but is vaguely worded, risking over-criminalization. The lack of procedural safeguards, judicial oversight, and precise definitions could result in suppression of civil liberties. These provisions need to be re-evaluated to ensure they are not misused to target dissent or minority communities.

The enactment of the Bharatiya Nyaya Sanhita (BNS) marks a significant and much-needed reform in India's criminal justice system. In a society that is rapidly evolving—technologically, socially, and culturally—it is imperative that the legal framework also transforms to remain relevant and effective. The Indian Penal Code, though foundational, was a colonial-era legislation that no longer fully reflects the realities and aspirations of contemporary India. In this context, the BNS emerges as a timely and transformative initiative.

However, no legal reform is without its limitations. The BNS, despite its progressive ambitions, contains certain ambiguities, structural flaws, and areas of concern that merit serious attention. It is essential to acknowledge that no statute is flawless at its inception. The true strength of a legal system lies not only in the text of the law but also in its dynamic evolution through judicial interpretation and legislative amendments.

I believe the BNS holds substantial promise for aligning the criminal justice system with present-day needs and constitutional values. Its imperfections should not overshadow its potential. With vigilant implementation, critical academic engagement, and a responsive judiciary and legislature, the BNS can be refined into a robust legal instrument suited for the demands of modern India.