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# **"A COMPREHENSIVE OVERVIEW OF BHARTIYA NYAYA SANHITA: A MODERNIZED APPROACH TO CRIMINAL LAW IN INDIA"**

AUTHORED BY - APARNA

## **➤ Abstract**

India's criminal justice framework for over 150 years relied on the colonial-era the Indian Penal Code (IPC, 1860). In December 2023, Parliament passed three new statutes one of which was Bharatiya Nyaya Sanhita (BNS), which came into effect on 1 July 2024. These were expected to overhaul outdated laws and create a modern, justice-centric system. The government pitched them as shorn of colonial vestiges, reflecting India's values and designed to streamline procedures, digitize evidence, enforce timelines, and focus on victims. This research paper deals with need for new criminal law, changes brought by such law, challenges and suggestions for implementing the Bhartiya Nyaya Sanhita.

**Keywords:** Bhartiya Nyaya Sanhita, Indian Penal Code, Criminal, Law, Victims

## **➤ Introduction**

The landscape of Indian criminal law is undergoing a significant transformation. The advent of the Bhartiya Nyaya Sanhita (BNS) represents a pivotal moment in this evolution, aiming to modernize and streamline the way criminal justice is administered in India. The introduction of this new legal framework is expected to address the shortcomings of its predecessor, the Indian Penal Code (IPC), which has been in force since 1860. Despite its historical importance, the IPC has often been criticized for being outdated, rigid, and ill-suited to the complexities of contemporary society.

## **➤ The Need for Reform in Indian Criminal Law**

Before diving into the specifics of the Bhartiya Nyaya Sanhita, it is crucial to understand the context that led to the reform. The Indian Penal Code, drafted by the British colonial administration under the guidance of Lord Macaulay, served as the cornerstone of Indian criminal law for more than 160 years. While it was a pioneering document in its time, there

have been mounting criticisms in recent years about its inability to address modern-day criminal justice needs.

### **1. Outdated Provisions**

Several sections of the IPC were considered to be archaic, particularly in dealing with issues such as cybercrimes, environmental offenses, and social crimes like domestic violence, sexual harassment, and trafficking. The law failed to keep pace with technological advancements and evolving social dynamics.

### **2. Ambiguities and Loopholes**

Legal practitioners and judges often found themselves dealing with ambiguous interpretations of several provisions within the IPC, leading to inconsistent judgments. Some laws were vague, leaving room for exploitation by criminals and legal loopholes that made prosecution difficult.

### **3. Inadequate Protection for Victims**

Despite some reforms, the IPC has been criticized for not offering sufficient protection to victims of crime. The law has often failed to provide effective and timely relief to victims of crimes, particularly in cases of sexual assault, domestic violence, and human trafficking.

### **4. Modernizing the Penal Code**

The advent of new challenges in a globalized world, including cybercrimes, terrorism, and organized crime, demanded a comprehensive overhaul of the criminal justice system. Reforming the IPC was seen as an essential step toward ensuring that Indian criminal law could deal effectively with these contemporary issues. The introduction of the Bhartiya Nyaya Sanhita is an attempt to address these challenges. By reimagining the framework of criminal law, this new system aims to strike a balance between maintaining societal order and protecting individual rights.

## **➤ Key Features of Bhartiya Nyaya Sanhita**

The Bhartiya Nyaya Sanhita introduces several innovative changes, which are expected to shape the future of criminal justice in India.

## 1. Modernization of Criminal Definitions

The BNS provides updated definitions of crimes that better reflect the nature of modern criminal activity. While traditional crimes such as theft, murder, and assault remain, new categories such as cybercrimes, financial crimes, and offenses related to terrorism have been explicitly addressed. The BNS criminalizes acts like hacking, identity theft, and the use of social media platforms for criminal purposes, making it relevant to today's digital age. Furthermore, the BNS brings clearer definitions of organized crime, targeting syndicates and gangs involved in transnational criminal activities. The law introduces harsher penalties for such crimes and incorporates measures aimed at preventing the spread of organized criminal enterprises.

### (a) Organized Crime and Syndicates

Organized crime is more formally defined under Section 111 in the BNS to include activities carried out by criminal syndicates or groups with a hierarchical structure. Crimes like drug trafficking, human trafficking, smuggling, and illegal arms trade are defined as organized criminal activities with stricter penalties for those involved in such enterprises.

### (b) Terrorism

Terrorism is more comprehensively defined under section 113 of BNS Act, 2023 to include acts of violence, destruction, or intimidation intended to coerce the government or society for political, ideological, or religious motives.

### (c) Mob Lychning

Section 103(2) of the BNS states that if five or more people act together to commit murder based on caste, race, sex, language, or other grounds, each member of the group can be punished with death or life in prison. The offense involves the same intent and consequences as murder.

### (d) Snatching

Snatching is a crime under Section 304 of the Bharatiya Nyaya Sanhita (BNS) of 2023. It is defined as taking someone's movable property without their consent, by force, quickly, or suddenly.

## 2. Enhanced Sentencing and Proportionality

One of the key features of the BNS is its emphasis on proportionality in sentencing. The law introduces a more nuanced approach to punishment, recognizing that the severity of penalties should be commensurate with the nature of the crime. For example,

the BNS allows for harsher penalties for repeat offenders and addresses crimes against vulnerable groups such as women, children, and minorities with stricter sentencing. Additionally, the law introduces mechanisms to ensure that life sentences are carried out effectively, reducing the occurrence of cases where criminals are released prematurely.

### **3. Crime against Woman and Child**

A separate Chapter-V dealing with crime against woman and child is added. It provides for the tougher punishment and in some cases of offences like gang rape of child or trading child offender can be punished with death penalty. Section 69 of the Sanhita penalizes sexual relations via deceit false promises of marriage, employment or identity suppression with up to 10 years imprisonment and fines.

### **4. Restorative Justice Mechanisms and introduction of community services**

The BNS emphasizes the need for restorative justice, particularly for minor offenders. Rather than focusing solely on punitive measures, the new law advocates rehabilitation and reintegration of offenders into society. This approach encourages offenders to make amends for their actions, often through community service or restitution to victims.

### **5. Technology and Cybercrime**

With the rise of technology and digital platforms, the BNS introduces robust provisions to deal with cybercrimes. The law criminalizes offenses such as online harassment, data theft, and cyber terrorism, which have become increasingly prevalent in India and across the globe. By bringing in specific provisions for digital crimes, the BNS reflects the need for criminal law to evolve alongside technological advancements. Moreover, the BNS promotes the use of technology within the justice system itself, including the digitization of court processes, the use of AI for case management, and the establishment of online platforms for filing complaints and conducting hearings, especially for minor offenses.

### **6. Treason a new offence in place of Sedition**

BNS has omitted section 124A of IPC under which sedition was a punishable offence. BNS has replaced sedition with treason. A new offence relating to act of endangering sovereignty, unity and integrity of India has been added under section 152 in BNS.

## 7. Removal of Obsolete/Colonial Provisions

Certain prejudicing law of old code like adultery provided under section 497 and homosexuality (unnatural offences) of section 377 of said code is no more crime under new law. It reflects compliance with recent Supreme Court rulings and modern values.

## 8. Simplified Language and Structure

New Sanhita has reorganised old Indian Penal Code consisting of sections 511 into 358 sections, and also more clear language is used making easier interpretation by police, judiciary, and the public.

## 9. Continuity with Changes

About 80% of IPC provisions has been retained by the new Sanhita. Core concepts like mens rea, abetment, conspiracy, and private defence has been remained intact but only renumbered in more synchronised way.

### ➤ Criticisms and Challenges

While the Bhartiya Nyaya Sanhita is a forward-thinking and much-needed reform, it is not without its criticisms. The Bharatiya Nyaya Sanhita, 2023 (BNS) India's new criminal code replacing the Indian Penal Code (IPC) of 1860 has drawn significant criticism and raised several challenges, despite being hailed by the government as a historic reform. Here's a detailed look at the major criticisms and implementation challenges of the BNS:

#### 1. Superficial Changes – Mostly Cosmetic

Critics say 80% of the IPC is retained, with section numbers merely renumbered. Terminological changes (like "officer" to "functionary") are viewed as symbolic. Many archaic concepts remain intact without substantial legal modernization. The law is mostly a repackaging exercise without radical reforms claimed by the legal scholars.

#### 2. Implementation Challenges

The implementation of such a comprehensive reform could prove to be a challenge. The lack of proper infrastructure, trained personnel, and resources in certain regions could hinder the law's effective enforcement.

### **3. Resistance from Traditionalists**

The BNS represents a significant departure from traditional criminal law concepts. Some legal experts and practitioners may resist the changes, particularly in areas related to the decriminalization of certain offenses and the introduction of restorative justice mechanisms.

### **4. Overcriminalization**

While the BNS seeks to decriminalize certain minor offenses, there is a concern that it may lead to the over-criminalization of conduct that was previously addressed through civil or administrative measures.

### **5. Balancing Retribution and Rehabilitation**

Striking the right balance between punishment and rehabilitation will require careful consideration. The restorative justice model is still a relatively new concept in India and may face implementation hurdles.

### **6. No Sentencing Reform**

Despite calls for graded sentencing or structured guidelines, BNS retains discretionary punishments without clear frameworks. This allows inconsistency and arbitrariness in judicial decisions.

### **7. Gender Concerns**

While the law is more gender-inclusive, critics argue. It does not go far enough in protecting transgender individuals from sexual violence.

### **8. Judicial Delay**

Courts already overburdened with cases continued with old laws and adding of new laws may add complexity unless backed with resources. Huge gap in training police, prosecutors, and judges in digital tools & new procedures can complicate the judicial burden.

### **9. Lack of awareness**

Due to lack of awareness general public, especially rural citizens, unaware of their new rights and obligations. There should be proper awareness campaign, seminars or

conferences to teach and aware the public.

While the Bharatiya Nyaya Sanhita is a bold attempt to modernize Indian criminal law, its success depends on how it's implemented. The reforms face legitimate concerns of Over-policing, insufficient infrastructure, privacy risks, lack of judicial preparedness. Unless training, accountability, privacy protections, and legal clarity are prioritized, the law may struggle to deliver the justice it promises.

### ➤ **Suggestions**

Here are key suggestions for improving the Bharatiya Nyaya Sanhita, 2023 (BNS) to ensure it delivers fair, modern, and effective justice in India:

#### **1. Narrow and Clarify Vague Provisions**

Section 152 of the Bharatiya Nyaya Sanhita (BNS) deals with acts that endanger the sovereignty, unity, and integrity of India, effectively replacing the former sedition law. It criminalizes actions that incite secession, armed rebellion, or subversive activities, or encourage separatist sentiments. It should be clearly defined to avoid misuse against dissent or criticism and also to ensure safeguards for free speech by excluding peaceful protest and journalistic activity.

#### **2. Establish Structured Sentencing Guidelines**

New Sanhita lacks graded punishments based on severity, victim vulnerability, and intent. Hence there should be Created a Sentencing Commission or adopt a UK-style sentencing matrix. This will reduce judicial arbitrariness and improve consistency in sentencing.

#### **3. Invest in Training and Infrastructure**

Modern laws need well-trained police, prosecutors, and judges, along with forensic and digital infrastructure. Most rural areas still lack capacity to enforce digital procedures and forensic norms. Hence there should be set up dedicated training institutes, mobile forensic units, and real-time legal support for officers.

#### **4. Periodic Review and Consultation**

There should be reform in law evolving with time and technology. A permanent body for monitoring impact, gathering stakeholder feedback, and updating the law can be

made. Hence suggestive measures include establishing a Criminal Law Reform and Monitoring Commission with members from judiciary, police, civil society, and academia.

#### **5. Gender & Inclusivity Enhancements**

Expand protections for transgender, non-binary, and disabled individuals under assault and harassment provisions. Intersectional vulnerabilities should be used in sentencing and bail.

#### **6. Translate and Disseminate Law in All Official Languages**

Law is for common citizen. Hence common citizens and rural police officers must understand the law clearly. To do so translations and simplified guides should be provided across all 22 official languages.

#### **7. Promote Public Legal Awareness**

There should be Launch nationwide campaigns to educate people about Zero FIR, Their rights under new laws, Electronic filing and forensic timelines. In this measure Partnership with NGOs, schools, and panchayats for legal literacy programs can be effective step.

### **➤ Conclusion**

The Bhartiya Nyaya Sanhita represents a bold step toward reforming India's criminal justice system. By addressing the shortcomings of the Indian Penal Code and updating the legal framework to reflect modern challenges, the BNS holds the promise of a more efficient, transparent, and victim-centric system. While there are challenges in its implementation, the vision of a more equitable criminal justice system is within reach. The Bhartiya Nyaya Sanhita could potentially usher in a new era of criminal law in India, one that better balances the needs of society, the protection of rights, and the goal of delivering timely justice.

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