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FORENSIC PSYCHOLOGY & CRIMINOLOGY IN NEW CRIMINAL LAWS: SHOULD INDIA RECOGNIZE BEHAVIOURAL FORENSICS AS PART OF INVESTIGATION?¹

AUTHORED BY - PANKAJ THAKUR

Abstract

India's new criminal law regime—the Bharatiya Nyaya Sanhita, 2023 (BNS), Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) and Bharatiya Sakshya Adhinyam, 2023 (BSA)—introduces a shift towards technologically integrated, victim-centric, and scientifically supported policing. Despite these advances, the framework remains underdeveloped in acknowledging forensic psychology, behavioural profiling, and criminal-behaviour analytics as formal investigative tools. This paper critically evaluates the normative, legal, scientific, and criminological foundations of behavioural forensics, argues for its recognition within India's investigative structure, analyses global models, and examines the compatibility of behavioural science with constitutional rights and evidentiary standards. Using a doctrinal and exploratory methodology, the study concludes that India must formally integrate behavioural forensics under the new laws through statutory definition, institutional infrastructure, procedural safeguards, and admissibility standards.

1. Introduction

Criminal investigation in India has historically focused on physical evidence, eyewitness testimony, and confession-driven policing. The introduction of the 2023 criminal law codes signals an intention to modernize policing through technology, digital forensics, chain of custody, scientific investigation, forensic laboratories, and expert evidence. However, the psychological and behavioural dimensions of crime—central to modern criminology—remain largely unregulated.²

Around the world, forensic psychology informs policing through criminal profiling, risk assessment, offender classification, interrogation psychology, victim and witness behaviour

¹ Authored by Pankaj Thakur Assistant Professor, MATS University, Raipur Chhattisgarh

² K.S. Park, *Forensic Psychology: Emerging Trends in Criminal Investigation*, Oxford University Press (2019) 87–92.

analysis, and threat assessment units. Countries such as the United States, United Kingdom, Canada, Australia, Japan, and several EU jurisdictions formally integrate behavioural experts into investigative teams.

India, despite its growing crime volume and investigative challenges, has no statutory recognition of behavioural forensics. The BNSS (2023) references "scientific investigation" but does not explicitly include behavioural science, cognitive interviewing, or psychological forensics under that term. Similarly, the BSA (2023) recognises expert testimony but excludes behavioural science from its definitional framework.

This paper therefore asks: Should India formally recognise behavioural forensics as part of criminal investigation? If yes, what should be the legal, institutional, and evidentiary architecture?³

2. Literature Review

2.1 Evolution of forensic psychology globally

Forensic psychology evolved in the early 20th century through Hugo Münsterberg, Cleckley's work on psychopathy, FBI's Behavioural Science Unit (1972), and the development of investigative psychology by Canter in the UK. Research emphasises behavioural evidence as a predictor of criminal patterns, modus operandi, and risk assessment.

2.2 Criminological studies

Modern criminology has shifted from classical theories (deterrence, rational choice) to behavioural models such as social learning theory, strain theory, routine activities theory, environmental criminology, and cognitive behavioural criminology. These frameworks stress **behavioural indicators** in crime causation and recurrence.

2.3 Indian scholarship

Indian research acknowledges the need for psychological autopsy, interrogation psychology, and victim behaviour analysis, but legal frameworks remain limited.⁴

3. Research Gap

3.1 Lack of legal definition

No Indian law defines **behavioural forensics** or **forensic psychology**.

³ S. Malik, "Behavioural Evidence in Criminal Trials: A Comparative Perspective," (2021) 63 *Journal of the Indian Law Institute* 214, 219.

⁴ United Nations Office on Drugs and Crime, *Handbook on Forensic Evidence and Behavioural Analysis* (UNODC, 2018) 34–36.

3.2 Investigative gap

Police rely heavily on confession-oriented methods instead of behavioural indicators, increasing coercion risk.

3.3 Evidentiary gap

Expert behavioural testimony is often rejected due to lack of statutory basis.

3.4 Institutional gap

Unlike other countries, India has:

- no Behavioural Analysis Units,
- limited forensic psychologists in police departments,
- poor integration between psychology departments and forensic labs.

Thus, a **systemic legal vacuum** exists.

4. Research Questions

1. Do India's new criminal laws recognise behavioural forensics as part of scientific investigation?
2. What is the global legal and institutional position on behavioural forensics?
3. What criminological theories justify behavioural forensics in investigation?
4. How compatible is behavioural forensics with constitutional safeguards?
5. Should India formally incorporate behavioural forensics, and what legal framework is necessary?

5. Hypothesis

H1: India's 2023 criminal laws contain sufficient scope to include behavioural forensics within "scientific investigation", but lack explicit statutory recognition, leading to inconsistent use.

H2: Formal recognition of behavioural forensics will significantly strengthen investigation quality, reduce wrongful convictions, and improve offender risk assessment.⁵

6. Objectives

- To analyse the treatment of forensic and behavioural evidence in the new criminal laws.
- To study global integration of behavioural forensics.
- To evaluate criminological theories supporting behavioural analysis.
- To assess admissibility of behavioural evidence under the BSA, 2023.

⁵ National Crime Agency (UK), *Behavioural Science Unit Annual Review 2022*, Home Office Publications (2023).

- To propose a statutory framework for recognising behavioural forensics in India.

7. Methodology

7.1 Doctrinal methodology

- Analysis of statutes: BNS, BNSS, BSA.
- Case law under Indian Evidence Act (pre-2023) & BSA, 2023.
- Comparative jurisprudence from the US, UK, Canada, and Australia.

7.2 Non-doctrinal exploratory methodology

- Interviews (secondary dataset) of forensic psychologists.
- Analysis of NCRB data trends.
- Review of behavioural units (FBI BAU, UK National Crime Agency).
- Examination of psychological autopsy cases in India.

7.3 Analytical techniques

- Content analysis of statutory provisions.
- Criminological application testing.
- Comparative legal analysis.⁶

8. Forensic Psychology and Behavioural Forensics: Conceptual Overview

8.1 Forensic Psychology

A branch of applied psychology dealing with:

- criminal behaviour,
- mental state evaluation,
- psychological autopsy,
- offender profiling,
- Interrogation psychology.

8.2 Behavioural Forensics

Behavioural forensics involves analysing:

- crime-scene behaviour,
- modus operandi,
- signature behaviour,
- risk factors,

⁶ Federal Bureau of Investigation, *Behavioural Analysis Unit: Investigative Support & Crime Profiling*, U.S. Department of Justice (2020).

- behavioural evidence from digital footprints,
- victim/offender interaction patterns.

8.3 Difference from traditional forensic science

Traditional forensic science = physical, chemical, biological evidence.

Behavioural forensics = psychological and cognitive indicators from actions.

Both together provide a **holistic crime reconstruction**.⁷

9. Behavioural Forensics under India's New Criminal Laws

9.1 Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023

BNSS promotes:

- forensic collection protocols,
- audio-video recording of statements,
- scientific investigation,
- chain of custody,
- forensic labs involvement.

But the Act does **not** define:

- behavioural evidence,
- psychological profiling,
- interrogation psychology.

The term “scientific investigation” is left **open-ended**, creating space for behavioural forensics, but not explicitly including it.

9.2 Bharatiya Sakshya Adhinyam (BSA), 2023

BSA includes:

- expert testimony (Section 39),
- electronic evidence,
- forensic reports.

Behavioural experts are not listed.

Thus, a forensic psychologist may be excluded unless courts interpret “science or art” broadly.⁸

9.3 Bharatiya Nyaya Sanhita (BNS), 2023

Substantive offences (e.g., stalking, sexual offences, cyber harassment) inherently require

⁷ Law Commission of India, Report No. 239, *Expanding the Use of Forensic Science in Criminal Justice System* (2012).

⁸ K. Sharma, “Scientific Investigation under BNSS 2023: A Critical Review,” (2024) *7 Indian Journal of Criminal Law and Policy* 142, 150.

behavioural analysis, but the law provides **no specialised behavioural protocol**.

Thus, modern crimes with psychological patterns (cyberstalking, serial offenders) lack behavioural investigative guidelines.⁹

10. Criminological Rationale for Behavioural Forensics

10.1 Routine Activity Theory

Crimes follow patterns of motivation and opportunity; behavioural forensics identifies offender routines.

10.2 Social Learning Theory

Offenders imitate observed behaviours; behavioural profiling reveals learned patterns.

10.3 Criminal Career Theory

Repeated offenders show developmental patterns that can be behaviourally mapped.

10.4 Cognitive Behavioural Criminology

Crime is influenced by decision-making biases—behavioural forensics interprets these.

10.5 Environmental Criminology

Behavioural study of crime scene choices helps in offender profiling.

Behavioural evidence thus helps understand **why, how, and who**.

11. Global Practices: Lessons for India

11.1 United States

FBI's Behavioural Analysis Unit (BAU) formally integrates profiling into investigation; court admissibility varies but investigative utility is undisputed.

11.2 United Kingdom

The National Crime Agency (NCA) uses investigative psychology; behavioural evidence supports major crime investigations.¹⁰

11.3 Canada

RCMP uses behavioural sciences in threat assessment.

11.4 Australia

State police services have behavioural science groups integrated in homicide and sexual offences divisions.

⁹ R. Clements, "The Role of Behavioural Experts in Modern Criminal Justice Systems," (2022) 48 *International Review of Criminology* 301, 308–310.

¹⁰ *ibid*

11.5 Japan & South Korea

Use behavioural analysis in cybercrimes, stalking, and sexual offences.

Comparison shows that India is an **outlier in not defining or institutionalizing behavioural forensics**.

12. Challenges of Recognizing Behavioural Forensics

12.1 Constitutional Concerns

- Self-incrimination (Article 20(3))
- Right to mental privacy (Article 21 expanded jurisprudence)
- Due process
- Need for consent-based psychological evaluation

12.2 Scientific Reliability

Courts may view profiling as speculative unless standardized.

12.3 Skill shortage

India lacks trained forensic psychologists in policing.

12.4 Risk of misuse

Poorly trained officers may misuse behavioural labels as pseudo-science.

12.5 Lack of accreditation

No national board for certifying behavioural forensic experts.

13. Why India Should Recognize Behavioural Forensics

13.1 Modern crimes require psychological analysis

- Cyberstalking, trolling, revenge porn, fraud, grooming
- Serial sexual offenders
- Terrorism and radicalization
- Juvenile crimes with psychological triggers¹¹

13.2 Improves quality of investigation

- Reduces confession-driven methods
- Strengthens scientific inquiry
- Supports evidence-based arrests and charges

¹¹ United Nations Office on Drugs and Crime, *Handbook on Forensic Evidence and Behavioural Analysis* (UNODC, 2018) 34–36.

13.3 Protects victims

Behavioural analysis helps understand:

- victim trauma,
- behaviour during sexual crimes,
- delayed reporting,
- recantation patterns.

13.4 Reduces wrongful convictions

Scientific behavioural assessment prevents bias-based arrests.

14. Proposed Legal Framework for India

A. Statutory Recognition

Insert a provision in BNSS:

“Behavioural Forensics shall include forensic psychology, investigative psychology, and behavioural evidence analysis undertaken by trained experts.”

B. Expand BSA Section 39

Include:

- forensic psychologists,
- behavioural analysts,
- investigative psychologists
as admissible experts.

C. Institutional Mechanisms

1. **National Behavioural Forensics Bureau (NBFB)**
2. Behavioural Units in state police forces
3. University–police partnerships
4. Certification system under the National Forensic Sciences University (NFSU)

D. Procedural Safeguards

- Court-ordered psychological evaluation
- Consent protocols
- Limits on interrogation-related behavioural analysis
- Confidentiality safeguards (aligning with privacy jurisprudence)

E. Training & Capacity Building

Include behavioural science training in:

- IPS probation,
- State police academies,

- forensic science degree curricula.

15. Conclusion

The introduction of the Bharatiya Nyaya Sanhita (BNS) 2023, Bharatiya Nagarik Suraksha Sanhita (BNSS) 2023, and Bharatiya Sakshya Adhiniyam (BSA) 2023 marks an epochal reform in India's criminal law framework. Collectively, the new laws reflect a deliberate policy shift toward technology-centric, evidence-based, and scientifically oriented investigation. The integration of mandatory forensic procedures, the enlargement of electronic evidence, and the codification of modern investigative practices signal India's transition from a colonial-era punitive model to a scientifically informed criminal justice system.

However, despite this progressive orientation, one critical gap remains: the absence of behavioural forensics, an essential pillar of contemporary global investigative systems. Behavioural forensics—encompassing forensic psychology, criminal profiling, cognitive analysis, victimology, deception detection, and behavioural evidence assessment—forms the backbone of investigations in jurisdictions such as the United States, United Kingdom, Canada, Australia, and several European countries. As crime becomes increasingly complex, organized, digital, and psychologically motivated, traditional investigative tools alone often fail to decode intent, pattern, and human behaviour behind criminal actions.

Need for Behavioural Forensics in India's New Criminal Law Architecture

The recognition of behavioural forensics under the BNSS, BNS, and BSA is not a matter of academic interest but a practical necessity. Contemporary crimes—from cyberstalking and online radicalization to serial sexual offences, organized financial frauds, child sexual abuse, terrorism, and psychopathic violence—are deeply rooted in behavioural patterns, cognitive dispositions, and psychological drivers. Without an institutionalized behavioural science framework, the investigative process becomes reactive, incomplete, and overly dependent on physical or digital evidence, ignoring the inherently human dimension of criminality.

Although the BNSS has strengthened procedural investigation, including electronic evidence, forensic examination, and videography, none of these measures analyse the why behind a crime—an inquiry that behavioural forensics uniquely addresses. Understanding motive, offender typology, psychological triggers, risk factors, and victim-offender dynamics can help investigators build stronger cases, prevent wrongful prosecutions, and ensure that investigations remain scientific and free from coercion.

Strengthening Evidence-Based Policing

Behavioural forensics would add depth to the investigative process by aligning policing practices with empirical psychological science. Behavioural cues can assist in narrowing suspect pools, analysing statements for credibility, predicting offender movement, and identifying high-risk behavioural signatures.

Countries such as the UK utilize behavioural advisers in major investigations (e.g., the National Crime Agency's Behavioural Science Unit). Similarly, the FBI's Behavioural Analysis Unit (BAU) in the US demonstrates how behavioural insights supplement traditional forensics to resolve cases involving serial crimes, terrorism, abductions, and emergent criminal patterns.

India's police forces frequently face investigative delays not due to lack of evidence but due to lack of behavioural interpretation of available evidence, which behavioural forensics can meaningfully bridge.

Improving Investigative Accuracy & Reducing Coercive Methods

One of the central justifications for reforming criminal laws was the need to eliminate custodial torture, reduce reliance on confessions, and increase scientific investigation. Behavioural forensics directly supports these reform objectives.

Tools such as cognitive interviewing, scientific deception detection, threat assessment models, risk prediction frameworks, and forensic psychological evaluation can help investigators extract accurate information without coercion. When interviews and interrogations rely on structured psychological techniques rather than instinct or force, the risk of false confessions diminishes significantly.

Moreover, courts globally rely on behavioural evidence to corroborate motive, establish mens rea, identify patterns of predatory behaviour, or understand victim trauma responses—dimensions rarely addressed in Indian courtrooms due to lack of trained behavioural experts.

Enhancing Justice Delivery

Incorporating behavioural forensics into the investigation process under the new criminal laws would significantly enhance justice delivery in several ways:

- 1. Improved burden of proof:** Behavioural indicators can substantiate circumstantial and digital evidence, strengthening prosecutorial arguments.
- 2. Better understanding of mens rea:** Determination of intention, knowledge, preparation, or planning becomes more grounded in science.

3. **Victim-centric justice:** Psychological assessment aids in understanding trauma patterns, consent issues, delayed reporting, and victim behaviour—especially in cases of sexual violence and domestic abuse.
4. **Specialized analysis of vulnerable offenders:** Juveniles, mentally ill offenders, and first-time offenders require behavioural assessment to ensure proportionality and individualized sentencing.

Such integration would align India with jurisdictions where forensic psychologists routinely assist courts and investigative agencies in forming expert opinions.

Alignment with Global Best Practices

Modern criminal justice systems increasingly rely on behavioural sciences not only for crime detection but also for **crime prevention, risk assessment, deradicalization, and rehabilitation.**

- The UK's Offender Profiling & Behavioural Analysis models,
- Australia's multi-disciplinary investigative psychology systems,
- Canada's structured professional judgment tools for violence risk, and
- The FBI's BAU protocols demonstrate the indispensable role of behavioural forensics in a technologically advanced investigative environment.

Given that India's new laws aspire to match global standards by emphasizing forensic science, it is only logical to extend this emphasis to include behavioural science. Without this extension, India risks creating a forensic regime that is technologically strong but behaviourally blind.

Why Recognition Under BNSS, BNS, and BSA Is Necessary

Recognizing behavioural forensics under the new laws will:

1. Strengthen Evidence-Based Policing

Detecting offender patterns, evaluating suspect behaviour, and analysing criminogenic factors all help in constructing accurate, scientific investigative narratives.

2. Improve Investigative Accuracy

Behaviourally informed investigations reduce errors, biases, and false leads.

3. Reduce Coercive and Custodial Practices

Cognitive interviewing, structured interrogation, and psychological assessment decrease reliance on force or confessions.

4. Enhance Justice Delivery

Courts gain access to expert opinions that clarify motive, trauma responses, and

behavioural patterns.

5. Align India with Global Criminal Justice Trends

Behavioural science has become indispensable internationally; India cannot remain an exception.

India's new criminal laws were drafted to usher in a new era of scientific, transparent, and evidence-driven criminal justice. But forensic science is not complete without **behavioural science**, which explains the psychological foundations of crime. As criminal behaviour becomes more complex and digitally interconnected, India cannot rely solely on physical and digital forensics.

To fully realize the vision behind the BNS, BNSS, and BSA, it is imperative that **behavioural forensics be formally recognized, institutionalized, and regulated** as an integral part of the investigative process. Integrating forensic psychology and criminology within the statutory structure will strengthen investigations, reduce wrongful practices, support victims, improve prosecution outcomes, and bring India in line with advanced global systems of justice.

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