

Reforming India's Criminal Justice System: A Critical Analysis of the Bharatiya Nyaya Sanhita, 2023

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Abstract

The Bharatiya Nyaya Sanhita, 2023 (BNS) marks a significant attempt to reform India's criminal justice system by replacing the colonial-era Indian Penal Code, 1860 (IPC). Enacted with the objective of decolonizing criminal law and promoting a justice-oriented framework, the BNS seeks to address contemporary forms of crime and improve victim protection. This paper critically examines the major reforms introduced under the BNS and evaluates whether the legislation represents a substantive transformation of India's criminal jurisprudence. Key reforms include the introduction of community service as a form of punishment, recognition of organized crime, mob lynching, terrorism, and sexual intercourse by deceit as distinct offences, along with the repeal of the colonial sedition law under Section 124A IPC. However, the legislation also faces serious criticism for retaining substantial continuity with the IPC, incorporating vague provisions such as Section 150, lacking gender-neutral sexual offence laws, and creating legal ambiguity through the repeal of Section 377 without adequate replacement safeguards. The paper argues that although the BNS introduces important progressive reforms, it remains only partially transformative due to unresolved constitutional, drafting, and human rights concerns.

Keywords: Bharatiya Nyaya Sanhita; Criminal Justice Reform; Sedition; Gender Neutrality; Criminal Law.

Introduction

India's criminal justice system has historically been governed by the Indian Penal Code, 1860 (IPC), a colonial legislation drafted under the leadership of Lord Macaulay during British rule. The IPC was primarily designed to maintain imperial authority and public order rather than to protect constitutional liberties or ensure victim-centric justice. Although the Code remained functional for more than 160 years, several of its provisions increasingly appeared outdated in light of technological advancements, evolving social realities, and constitutional jurisprudence developed after independence. Provisions relating to sedition, gender-specific sexual offences, and limited recognition of organized or cyber-enabled crimes attracted sustained criticism from legal scholars, courts, and reform commissions.¹

In response to growing demands for the decolonization and modernization of criminal law, the Government of India introduced the Bharatiya Nyaya Sanhita, 2023 (BNS), replacing the IPC. The BNS has been presented as a transformative reform intended to shift the criminal justice framework from a system focused merely on "punishment" to one emphasizing "justice." The legislation introduces reforms such as community service as punishment, recognition of organized crime and terrorism, stricter provisions for crimes against women and children, and the formal repeal of the colonial offence of sedition under Section 124A IPC.² However, critics argue that several controversial provisions continue in altered forms, particularly Section 150 BNS dealing with acts endangering sovereignty and integrity of India, thereby raising concerns regarding freedom of speech under Article 19(1)(a) of the Constitution.³

¹ Vijay Kumar Singh, and Paramjit S. Jaswal. "A Review of Criminal Law Reforms in India: Shaping the Future of Criminal Law in India." (2024).

² Renjith Thomas. "Bharatiya Nyaya Sanhita, 2023: A Critical Perspective." Available at SSRN 4898463 (2024).

³ Upendra Baxi, *The crisis of the Indian legal system. Alternatives in development: Law*. Stranger Journalism, 1982.

This paper aims to critically examine the reforms introduced under the BNS, 2023 and evaluate its constitutional, structural, and practical implications on India's criminal justice system.

1. Does the Bharatiya Nyaya Sanhita, 2023 genuinely reform and modernize India's criminal justice system?
2. To what extent does the BNS depart from the colonial framework of the Indian Penal Code, 1860?
3. What are the major constitutional and drafting concerns associated with the BNS, 2023?

Evolution of India's Criminal Justice Reform

The Indian Penal Code, 1860 (IPC), drafted during British colonial rule under Lord Macaulay, remained India's primary criminal law for over 160 years. Its principal objective was to maintain colonial authority rather than protect constitutional rights or individual liberties. Although retained after independence, several IPC provisions gradually became inconsistent with democratic values and modern social realities⁴. Colonial-era laws relating to sedition, adultery, and unnatural offences attracted significant constitutional criticism. In *Navtej Singh Johar v. Union of India*, and *Joseph Shine v. Union of India*, the Supreme Court emphasized that criminal law must evolve with constitutional morality and changing societal standards.

Emerging crimes such as cybercrime, organized crime, mob lynching, and transnational offences exposed major gaps within the IPC framework. These developments led to demands for decolonization and modernization of criminal law. Consequently, the Bharatiya Nyaya Sanhita, 2023 (BNS) was introduced to establish a victim-centric and justice-oriented system aligned with constitutional principles, contemporary challenges, and restorative justice approaches.

Critical Analysis

The Bharatiya Nyaya Sanhita, 2023 (BNS) has been introduced as a major step toward decolonizing India's criminal justice system and replacing the punitive orientation of the Indian Penal Code, 1860 (IPC) with a justice-oriented framework. Several reforms under the BNS reflect an effort to modernize criminal law in accordance with constitutional values and contemporary social realities. Simultaneously, the legislation has attracted criticism for retaining colonial structures, vague provisions, and drafting inconsistencies, thereby raising doubts regarding the depth of the reform process⁵. These are:

- **Community Service as Punishment:** One significant reform is the formal incorporation of community service as a mode of punishment under Section 4(f) BNS. Unlike the IPC, which primarily emphasized imprisonment and fines, the BNS adopts a restorative justice approach focused on rehabilitation and reintegration of offenders. In *Mohd. Giasuddin v. State of Andhra Pradesh*,⁶ the Supreme Court observed that punishment should encourage reformation rather than vengeance.
- **Victim-Centric Criminal Justice:** The BNS also strengthens victim-centric justice by prescribing enhanced punishments for grave offences such as gang rape, crimes against children, and offences causing permanent disability. These reforms reflect the recommendations of the Justice Malimath Committee, which advocated balancing the rights of victims and accused persons⁷.
- **Recognition of Contemporary Crimes:** The BNS further attempts to address emerging forms of criminality inadequately covered under the IPC. It criminalizes mob lynching, organized crime, terrorism, snatching, and sexual intercourse obtained through deceit⁸. Such provisions recognize evolving socio-criminal realities and technological changes. In *Deepak Gulati v. State of Haryana*,⁹ the Supreme Court held that consent obtained through fraudulent promises may be legally invalid, a principle now codified under Section 69 BNS.

⁴ Krishna Deo Gaur. *Textbook on the Indian penal code*. Universal Law Publishing, 2009.

⁵ Prasoon Dubey & Ragini Soni, "From Retribution to Reform: A Critical Analysis of the Bharatiya Nyaya Sanhita, 2023 and India's Criminal Law Renaissance" (2025) 8(3) *International Journal of Law Management & Humanities* 177

⁶ (1977) 3 SCC 287

⁷ Rachna Mishra, and Utkarsh Mishra. "Malimath Committee's Reforms in Criminal Justice System: A Critical Analysis." *Issue 6 Indian JL & Legal Rsch.* 4 (2022): 1.

⁸ Bharatiya Nyaya Sanhita, 2023, ss. 69, 103(2), 111, 113, 304

⁹ (2013) 7 SCC 675

➤ **Repeal of Sedition Law:** the repeal of Section 124A IPC relating to sedition represents a significant constitutional development. Decisions such as *Kedar Nath Singh v. State of Bihar*,¹⁰ and *Shreya Singhal v. Union of India*,¹¹ emphasized that restrictions on free speech must be narrowly construed and linked to incitement of violence.

Despite these reforms, substantial concerns remain regarding the transformative nature of the BNS. Critics argue that the legislation substantially reproduces the structure and language of the IPC with minimal substantive modifications, making it more of a legislative “rebranding” exercise than a genuine overhaul of criminal law¹². This criticism is:

➤ **Section 150 and Sedition Concerns:** Section 150 BNS, penalizes acts endangering the sovereignty, unity, and integrity of India. Although sedition has formally been repealed, the broad wording of Section 150 risks functioning as a de facto sedition provision capable of restricting political dissent and free speech protected under Article 19(1)(a) of the Constitution.

➤ **Lack of Gender-Neutral Provisions:** Constitutional concerns arise from the absence of gender-neutral sexual offence provisions. The BNS continues to recognize women alone as victims and men as perpetrators, thereby excluding male and transgender victims from statutory protection. Such exclusion appears inconsistent with Articles 14 and 21 of the Constitution and the principles recognized in *Navtej Singh Johar v. Union of India*,¹³ and *National Legal Services Authority v. Union of India*¹⁴. Moreover, while the repeal of Section 377 IPC decriminalized consensual same-sex relations, the failure to enact an alternative provision addressing non-consensual unnatural offences has created a legal vacuum.

➤ **Drafting Inconsistencies:** The BNS has also been criticized for mechanically reproducing drafting errors inherited from the IPC. Contradictory sentencing terminology and improper classification of offences indicate insufficient legislative scrutiny and weaken the coherence expected from a modern penal statute¹⁵.

Therefore, although the BNS introduces important progressive reforms, unresolved constitutional concerns, drafting ambiguities, and structural continuity with the IPC limit its claim of being a fully transformative criminal code.

Recommendations for Reform

To ensure that the Bharatiya Nyaya Sanhita, 2023 (BNS) functions as a truly modern and constitutionally compliant criminal code, several reforms are necessary.

➤ The legislation should adopt gender-neutral language in provisions relating to rape, sexual harassment, and stalking. Such reform would extend equal legal protection to male and transgender victims in conformity with Articles 14 and 21 of the Constitution and the principles recognized in *National Legal Services Authority v. Union of India*¹⁶.

➤ Section 150 of the BNS must be clarified through precise statutory language and procedural safeguards. Ambiguous expressions such as “subversive activities” and “endangering unity” should be narrowly defined to prevent misuse against journalists, activists, and political dissenters. The principles laid down in *Kedar Nath Singh v. State of Bihar*,¹⁷ and *Shreya Singhal v. Union of India*³ should guide the interpretation of restrictions on free speech.

➤ Drafting inconsistencies inherited from the IPC should be rectified through comprehensive legislative review. Contradictory sentencing terminology and misplaced classifications create interpretative uncertainty and undermine legal clarity. A modern penal statute must maintain coherence and precision.

➤ The repeal of Section 377 IPC should be accompanied by specific safeguards criminalizing non-consensual unnatural offences and acts involving bestiality, while fully respecting consensual adult relationships recognized in *Navtej Singh Johar v. Union of India*¹⁸.

¹⁰ AIR 1962 SC 955

¹¹ (2015) 5 SCC 1

¹² Dr. Justice Balbir Singh Chauhan, “Reforming Criminal Law in India: A Critical Review of Bharatiya Nyaya Sanhita” (2024) 15(2) *Indian Journal of Legal Studies* 54

¹³ (2018) 10 SCC 1

¹⁴ (2014) 5 SCC 438

¹⁵ Jagdish Sharan Verma, Leila Seth, Gopal Subramanian, and Justice JS Verma Committee. “Report of the committee on amendments to criminal law.” (2013).

¹⁶ (2014) 5 SCC 438

¹⁷ AIR 1962 SC 955

¹⁸ (2018) 10 SCC 1

The effective implementation of the BNS requires strengthening judicial infrastructure through increased judicial appointments, technological modernization, and specialized training for police and judges. Without institutional reform, legislative changes alone cannot ensure timely and effective criminal justice delivery.

Conclusion

The Bharatiya Nyaya Sanhita, 2023 (BNS) marks a significant attempt to modernize and decolonize India's criminal justice system by shifting the focus from punishment to justice. Reforms such as the introduction of community service, recognition of organized crime and mob lynching, enhanced victim-centric provisions, and repeal of the colonial sedition law reflect an effort to align criminal law with contemporary constitutional and social realities. However, the BNS continues to face important constitutional and drafting concerns. The broad wording of Section 150 raises fears regarding misuse against free speech and political dissent, while the absence of gender-neutral sexual offence provisions and the repeal of Section 377 without adequate replacement safeguards create notable legal gaps. Further, the substantial continuity between the BNS and the IPC has led to criticism that the legislation is more reformatory than transformative in nature. Therefore, although the BNS introduces progressive changes, its long-term success will depend upon legislative refinement, judicial interpretation, and effective implementation consistent with constitutional values, human rights, and substantive justice.