
THE BHARATIYA NYAYA SANHITA, 2023: A PARADIGM SHIFT IN INDIAN CRIMINAL JURISPRUDENCE OR A MERE REBRANDING?

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ABSTRACT

The enactment of the Bharatiya Nyaya Sanhita, 2023 (BNS), which officially commenced on July 1, 2024, marked the formal retirement of the Indian Penal Code, 1860 (IPC), a colonial-era statute that dictated India's substantive criminal law for over 160 years. Framed by the Indian Parliament as a monumental step toward the decolonization of the criminal justice system, the BNS introduces new offenses, reclassifies existing ones, and modifies the punitive framework to include restorative elements such as community service. However, the legal fraternity, scholars, and civil liberties advocates remain sharply divided on the true nature of this legislative overhaul. This comprehensive research article investigates whether the BNS represents a substantive legal reform—addressing the contemporary socio-legal realities of modern India—or if it is merely a cosmetic rebranding of the IPC, characterized by the shuffling of section numbers, the translation of nomenclature, and the preservation of colonial state power. Through a meticulous comparative analysis of key provisions, including sedition, mob lynching, organized crime, and the reclassification of offenses, this paper concludes that while the BNS introduces crucial structural modernizations, its core philosophical and functional framework largely mirrors its colonial predecessor, risking the perpetuation of over-criminalization and state impunity.

I. INTRODUCTION: THE DECOLONIZATION DIRECTIVE AND HISTORICAL CONTEXT

For more than a century and a half, the Indian Penal Code, 1860, drafted by the First Law Commission of India chaired by Lord Thomas Babington Macaulay, served as the bedrock of substantive criminal law in the Indian subcontinent.¹ The IPC was lauded globally for its precise drafting, comprehensive nature, and logical structure, which allowed it to endure vast societal shifts and technological revolutions. However, its foundational ethos was fundamentally colonial. It was designed by a foreign ruling power to govern a subjugated populace, prioritizing the security, stability, and absolute authority of the British Crown over the civil liberties and fundamental rights of the Indian citizen.

The introduction of the Bharatiya Nyaya Sanhita, 2023, along with its procedural and evidentiary counterparts—the Bharatiya Nagarik Suraksha Sanhita (BNSS) and the Bharatiya Sakshya Adhiniyam (BSA)—was explicitly framed by the Ministry of Home Affairs as an exercise in national decolonization.² The stated legislative objectives were to modernize the penal code, expedite the delivery of justice, and shift the paradigm from a purely retributive system to one that centers the rights of the citizen and the victim.³

Evaluating the success of this legislation requires a critical distinction between rhetorical decolonization and actual, substantive legal reform. Decolonizing a legal framework demands more than excising British terminology; it requires dismantling the structural imbalances of power between the State and the individual that colonial laws inherently protected. This article critically examines the text of the BNS, the debates surrounding its passage, and its early judicial interpretations to determine if it achieves this lofty goal or merely packages colonial mechanisms in indigenous terminology.

II. THE REBRANDING HYPOTHESIS: OLD WINE IN NEW BOTTLE

A rigorous textual comparison between the IPC and the BNS reveals a striking degree of continuity. A substantial majority of the IPC's provisions have been retained verbatim, preserving Macaulay's exact phrasing, explanations, and even the antiquated illustrations used

¹ Indian Penal Code, 1860, No. 45 of 1860, India Code (1860) (repealed 2024).

² Bharatiya Nyaya Sanhita, 2023, No. 45 of 2023, India Code (2023).

³ Statement of Objects and Reasons, The Bharatiya Nyaya Sanhita Bill, 2023, Bill No. 121 of 2023 (India).

to clarify the law. The primary argument categorizing the BNS as a "rebranding" exercise rests on the following observations:

A. Structural Reshuffling and the Disruption of Precedent

The most immediate and chaotic impact of the BNS is the renumbering of deeply entrenched legal sections. For generations, the offense of murder was universally recognized in India—even in popular culture—under Section 302 of the IPC. Under the BNS, murder is now penalized under Section 103.⁴ Cheating, formerly Section 420 (a number synonymous with fraud in the Indian lexicon), is now Section 316. Defamation has moved from Section 499 to Section 356.⁵

Critics argue that this structural reshuffling disrupts decades of established judicial precedent, administrative memory, and police functioning without offering any corresponding substantive benefit. The jurisprudence built around Section 302 or Section 420 over a century must now be retrofitted to new numbers. If the text defining the crime of murder and its punishment remains identical, renumbering the statute achieves no legal reform; it merely creates an administrative burden for the lower judiciary, the police, and legal practitioners who must now navigate a "new" code that is substantively identical to the old one.

B. Linguistic Shifts and Nomenclature

The transition from English nomenclature to Hindi and Sanskrit titles (*Nyaya Sanhita* instead of *Penal Code*) serves a powerful symbolic and political purpose. It signals a departure from the anglicized legal identity of the state. However, symbolic Indianization does not equate to substantive decolonization. As scholars have noted, translating a colonial law into a vernacular language does not rid the law of its colonial character if the legal standards, the burden of proof, and the definitions of the crimes remain unchanged.⁶ The rebranding hypothesis posits that the BNS relies heavily on this linguistic shift to project an image of reform, while leaving the substantive mechanics of state power untouched.

⁴ Bharatiya Nyaya Sanhita, 2023, § 103.

⁵ *Id.* § 356.

⁶ Mukul Mukul, Bhartiya Nyaya Sanhita (BNS), 2023: Critical Analysis of Changes from IPC, 12 INT'L J. RSCH. & ANALYTICAL REVS. 665, 668 (2025).

C. Retention of Colonial Frameworks and State Discretion

Despite the rhetoric of decolonization, the underlying philosophy regarding state power remains largely intact. The IPC was characterized by broad, vaguely worded offenses that granted immense discretionary power to law enforcement, a necessity for a colonial regime dealing with a restive population. The BNS has not only retained these broad discretionary powers but, in some cases, expanded them. Offenses related to public order, unlawful assembly, and state security maintain the wide definitional latitude that has historically allowed for the subjective application of the law by the police. Decolonization would have necessitated narrowing these definitions to protect civil liberties against state overreach, a task the BNS largely avoids.

III. THE REFORM HYPOTHESIS: SUBSTANTIVE MODERNIZATION.

Conversely, dismissing the BNS purely as a cosmetic exercise overlooks several critical, progressive inclusions that address modern criminal phenomena. The IPC, frozen in its 19th-century context, required courts to constantly stretch its provisions to cover contemporary crimes. The BNS addresses several of these gaps directly.

A. The Introduction of Community Service

For the first time in Indian penal history, the BNS formally introduces community service as a punitive measure. Under the IPC, punishments were strictly retributive: death, imprisonment, forfeiture of property, or fines. Section 4 of the BNS expands this list to include community service for petty offenses, such as public intoxication, defamation, or minor theft.⁷

This represents a genuine philosophical shift. It moves Indian criminal jurisprudence toward a restorative justice model, acknowledging that incarceration is not the appropriate response to all infractions. By providing an alternative to prison for minor, non-violent crimes, this reform has the potential to significantly reduce the burden on India's notoriously overcrowded prison system and prevent first-time petty offenders from being hardened by the prison environment.

B. Codification of Contemporary Crimes: Mob Lynching and Organized Crime

One of the most significant substantive reforms in the BNS is the specific codification of mob

⁷ Bharatiya Nyaya Sanhita, 2023, § 4..

lynching. India has witnessed a troubling rise in vigilante violence, but the IPC lacked the specific vocabulary to address it. Courts had to rely on the general provisions of murder (Section 302 IPC) read with common intention (Section 34 IPC), which often failed to capture the unique sociological and organized nature of hate-driven lynchings. Section 103(2) of the BNS specifically states that when a group of five or more persons acting in concert commits murder on the ground of race, caste or community, sex, place of birth, language, personal belief or any other similar ground, each member shall be punished with death or imprisonment for life.⁸

Furthermore, the BNS brings offenses like "organized crime" (Section 111) and "terrorism" (Section 113) into the general penal statute.⁹ Previously, these were governed exclusively by stringent special laws like the Unlawful Activities (Prevention) Act (UAPA) or the Maharashtra Control of Organised Crime Act (MCOCA). By defining them within the general law, the BNS modernizes the state's ability to tackle syndicates, human trafficking networks, and cyber-terrorism without necessarily having to invoke draconian special statutes for every instance, though concerns remain regarding overlapping jurisdictions.

C. Modernizing Sexual Offenses and Gender Neutrality

The BNS makes notable strides in addressing modern complexities surrounding sexual offenses. Section 69 of the BNS criminalizes sexual intercourse obtained by employing "deceitful means," which explicitly includes the false promise of employment, promotion, or marriage, without the intention of fulfilling it.¹⁰ Under the IPC, such cases were a massive grey area, requiring courts to constantly debate whether a false promise of marriage vitiated consent under the rape statutes or if it constituted mere cheating. Section 69 clarifies this, separating it from the core definition of rape while still providing statutory protection to victims of predatory deceit.

However, the BNS missed a crucial opportunity regarding gender neutrality. While the Parliamentary Standing Committee on Home Affairs, in its 246th Report, recommended making offenses like adultery and certain sexual offenses gender-neutral, the final legislation largely retained the patriarchal framing of sexual violence as a crime exclusively committed

⁸ *Id.* § 103(2).

⁹ *Id.* §§ 111, 113.

¹⁰ *Id.* § 69.

by men against women.¹¹ The omission of Section 377 (which criminalized unnatural offenses) following the Supreme Court's reading down of the statute in *Navtej Singh Johar* has ironically left male, transgender, and animal victims of non-consensual sexual assault without a clear statutory remedy under the new code.¹²

IV. THE SEDITION PARADOX: A MICROCOSM OF DEBATE

The most illustrative example of the reform-versus-rebranding debate is the treatment of Sedition. Section 124A of the IPC was the classic colonial tool used to stifle political dissent, famously used to prosecute freedom fighters like Bal Gangadhar Tilak and Mahatma Gandhi.¹³ During the drafting of the BNS, the government proudly announced the complete repeal of sedition, framing it as the ultimate act of decolonization.

However, the ghost of sedition remains deeply entrenched in the BNS. Section 124A of the IPC has been omitted, but it has been reincarnated under Section 152 of the BNS. The new provision penalizes acts endangering the "sovereignty, unity, and integrity of India." It states that whoever, purposely or knowingly, by words, signs, visible representation, electronic communication, or use of financial means, excites or attempts to excite secession, armed rebellion, or subversive activities, shall be punished with imprisonment up to life.¹⁴

While the word "sedition" (Rajdroh) has been removed, legal scholars argue that Section 152 is actually wider in its scope. By explicitly including "electronic communication" and "subversive activities" (a term left dangerously undefined), the new law broadens the state's interpretative power.¹⁵ In 1962, the Supreme Court in *Kedarnath Singh v. State of Bihar* severely restricted the application of Section 124A, ruling that only speech that incites violence or public disorder could be termed seditious.¹⁶ By drafting an entirely new section, the BNS potentially sidesteps the protective boundaries established by *Kedarnath Singh*, forcing citizens and courts to litigate the limits of free speech all over again.

¹¹ Parliamentary Standing Committee on Home Affairs, 246th Report on The Bharatiya Nyaya

¹² *Navtej Singh Johar v. Union of India*, (2018) 10 S.C.C. 1 (India).

¹³ Indian Penal Code, 1860, § 124A.

¹⁴ Bharatiya Nyaya Sanhita, 2023, § 152.

¹⁵ Shantanu Singh & Shraddha Mall, Old Sword in New Sheath: An Analysis of Section 152 of Bharatiya Nyaya Sanhita, 1 LAW, HUMAN. & SOC. SCI. J. 25, 27–29 (2026).

¹⁶ *Kedar Nath Singh v. State of Bihar*, A.I.R. 1962 S.C. 955 (India).

Early judicial encounters with Section 152 confirm these fears. In the 2024 case of *Tejender Pal Singh v. State of Rajasthan*, the Rajasthan High Court had to intervene to quash an FIR registered under Section 152 against a petitioner who posted a video expressing sympathy for a political leader.¹⁷ The High Court noted that Section 152 must be used as a "shield for national security," not a "sword against dissent," explicitly warning against using the new provision as a backdoor to revive colonial-era sedition practices. This paradox highlights the central tension of the BNS: a colonial label was discarded (reform), but the state's power to penalize dissent was retained and potentially expanded (rebranding).

V. RECLASSIFICATION OF OFFENCES AND THE THREAT OF OVER-CRIMINILIZATION

A critical, yet under-discussed, aspect of the BNS is its subtle reclassification of crimes and the recalibration of sentencing. The BNS has increased the minimum and maximum sentences for a vast array of offenses. While enhanced punishments for heinous crimes like gang rape or mob lynching are widely supported, the blanket increase in punitive measures across the board reflects an over-reliance on deterrence theory, which criminological research has repeatedly shown to be ineffective in isolation.¹⁸

Furthermore, the BNS expands the scope of police powers by increasing the number of offenses where police can arrest without a warrant and increasing the maximum duration of police custody beyond the traditional 15-day limit established under the old CrPC (now BNSS). This shift toward a more punitive approach contradicts the stated goals of decolonization. A truly decolonized criminal justice system would seek to limit state coercion and prioritize individual liberty. Instead, the BNS, in its quest for a "strong state," risks exacerbating the problem of over-criminalization and intensifying the incarceration crisis without providing corresponding increases in investigative capacity or procedural safeguards.

VI. THE DISSENTING VOICES: INSIGHTS FROM THE PARLIAMENTARY COMMITTEE

The legislative process behind the BNS provides further insight into its structural compromises.

¹⁷ *Tejender Pal Singh v. State of Rajasthan*, 2024:RJ-JD:34845 (Raj. H.C.) (India).

¹⁸ See generally *The New Architecture Of Crimes In India: A Critical Analysis Of Reclassification Under The Bharatiya Nyaya Sanhita*, 2023, Indian J.L. & Legal Rsch. (Dec. 18, 2025).

The Parliamentary Standing Committee on Home Affairs, tasked with reviewing the draft bills, produced its 246th Report highlighting several areas where the BNS fell short of genuine reform.¹⁹

Adultery: The BNS removed the offense of adultery, aligning with the Supreme Court's 2018 ruling in *Joseph Shine v. Union of India*, which struck down Section 497 of the IPC for treating women as the chattel of their husbands.²⁰ However, the Committee controversially recommended reinstating adultery as a gender-neutral offense to protect the "sanctity of marriage." The government ultimately rejected this recommendation, demonstrating a rare alignment with progressive constitutional morality over conservative family law paradigms.

Mental Illness vs. Unsoundness of Mind: Under the IPC, an act by a person of "unsound mind" did not constitute an offense. The BNS replaced this with "mental illness." The Committee accurately noted that "mental illness" is a far broader medical term that can include mood disorders, anxiety, or voluntary intoxication, potentially creating a massive loophole for criminal defense.²¹ While the government made minor adjustments, the linguistic shift demonstrates the friction that occurs when established legal terminology is altered without rigorous forensic analysis.

Section 377 and Non-Consensual Acts: As noted earlier, the Committee heavily criticized the total omission of Section 377, warning that doing so left a legislative vacuum regarding non-consensual sexual acts against men and transgender individuals. The government's failure to incorporate this feedback into the final BNS highlights a severe blind spot in its modernization agenda.

VII. IMPLEMENTATION CHALLENGE: TRANSITIONAL JURISPRUDENCE

Beyond the textual debate lies the monumental challenge of implementation. The transition from the IPC to the BNS on July 1, 2024, did not erase the IPC. According to fundamental principles of criminal jurisprudence and Article 20(1) of the Indian Constitution, criminal laws cannot be applied retrospectively. Therefore, any crime committed before July 1, 2024, must be investigated, tried, and punished under the IPC.²² For the next two to three decades, India

¹⁹ Parliamentary Standing Committee on Home Affairs, *supra* note 11.

²⁰ *Joseph Shine v. Union of India*, (2019) 3 S.C.C. 39 (India)

²¹ Parliamentary Standing Committee on Home Affairs, *supra* note 11, at 14.

²² India Const. art. 20, cl. 1.

will effectively operate under a dual criminal justice system. Police officers must maintain dual registers, lawyers must draft pleadings referencing both codes depending on the date of the offense, and judges must continually switch between the interpretive frameworks of the IPC and the BNS. This administrative friction is the steepest cost of the rebranding effort. If the BNS had been a radical, ground-up rewrite of criminal law (a true reform), this transitional pain would be justified. However, imposing this massive administrative burden merely to implement a code that is 80% identical to its predecessor raises serious questions about legislative efficiency and foresight.

VIII. CONCLUSION

The Bharatiya Nyaya Sanhita, 2023, defies a simplistic binary categorization. To label it a complete paradigm shift and a total decolonization of Indian criminal law is to ignore the overwhelming presence of Lord Macaulay's legal DNA within its pages. The foundational definitions of offenses, the general exceptions, the reliance on broad discretionary state power, and the inherently punitive approach remain deeply entrenched. To that extent, the massive administrative friction caused by the renumbering of sections and the linguistic Indianization leans heavily into the territory of a political rebranding exercise. However, dismissing the BNS as purely cosmetic is equally inaccurate and unfair to the genuine advancements it contains. The formal inclusion of community service, the explicit and severe tackling of mob lynching, the modernization of digital and organized crimes, and the creation of specific provisions for predatory deceit in sexual relations represent substantive, necessary, and long-overdue legislative reforms. Ultimately, the Bharatiya Nyaya Sanhita is a hybrid model: it is a heavy structural and linguistic rebranding that serves as a vehicle for a select few albeit highly significant modernized legal reforms. It is not the radical reimagining of criminal justice that was promised, but it is a step away from the colonial past. The true nature of the BNS will not be solely defined by the text enacted by Parliament, but by the transitional jurisprudence that emerges over the coming decades. It now falls to the Indian judiciary to ensure that the vaguely worded new provisions, such as Section 152, are strictly interpreted through a constitutional lens, ensuring that the "new" code becomes a shield for the citizen's liberty rather than a rebranded sword for state oppression.