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# **ANALYSIS OF THE BHARATIYA NYAYA SANHITA, 2023; THE BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 AND THE BHARATIYA SAKSHYA ADHINIYAM, 2023**

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## **ABSTRACT:**

The analysis scrutinizes the Bharatiya Nyaya Sanhita, The Bharatiya Nagarik Suraksha Sanhita and The Bharatiya Sakshya Adhinyam, these new laws enacted replaced the former colonial era laws including the Indian Penal Code, 1860, The Code of Criminal Procedure, 1973, The Indian Evidence Act, 1872 respectively. These laws have come into force from 1<sup>st</sup> July 2024 and have brought some key changes in the Indian legal system inclusive of the changes related to offences of terrorism, registration of electronic F.I. Rs, sedition, electronic evidence as primary proof, formation of directorate of prosecution etc. Mob lynching for the first time is included as a separate offence and reforming the scenarios of punishment by introducing a much minor punishment like community service and more severe punishments for major offences which are committed against women and children. This article aims to study the legislative intents and statutory frameworks of these codes. The analysis also explores potential impacts on legal practice, these laws will bring in the legal field. By dissecting the statutory provisions, procedural innovations, and doctrinal shifts, this study aims to provide a nuanced understanding of these legislative measures and their role in the evolution of the Indian legal landscape.

**Introduction:**

The Bhartiya Nyaya Samhita Bill, The Bhartiya Nagarik Suraksha Sanhita Bill and the Bhartiya Sakshya Bill were introduced in the Lok Sabha by the central government on 11 August 2023 with an aim to replace the British- era Laws which includes, The Indian Penal Code 1860, The code of criminal procedure, 1973 and the Indian evidence Act, 1872 respectively. These bills were subsequently attributed to the parliament's standing committee on Home Affairs for detailed assessment, the same day they were produced before the parliament. After the detailed evaluation the committee released its<sup>1</sup> report recommending some changes in the proposed bills. Taking into consideration the changes recommended by committee the government withdrew the respective bills on 12<sup>th</sup> December 2023. The bills were subsequently rectified and modified by the government in conformance with the committee's recommendations and were proposed on 12<sup>th</sup> December 2023 itself, as the Bhartiya Nyaya (second) Sanhita, the Bhartiya Nagarik Suraksha (second) Sanhita and the Bhartiya Sakshya (second) Adhiniyam. Later these codes were introduced in the Lok Sabha on Dec 20, 2023,<sup>2</sup> and were subsequently approved by the parliament on 21<sup>st</sup> December 2023 and further got assent from the President on 25<sup>th</sup> December 2023. The new codes will be put into force on July 1, 2024.

**Bhartiya Nyaya Sanhita:**

The Bhartiya Nyaya Sanhita includes 356 sections, herein the code sections are denoted as clauses. The Code majorly maintains the provisions of the Indian Penal Code, 1860 but also incorporates recommendations given by the Parliamentary Standing Committee, it includes some new offences, eliminates offences which have been struck down by the court, increases penalties, imprisonment and introduces community service (clause 4(f)) as a form of punishment for minor offences. As per clause 200 of BNS which is corresponding to that of section 168 of the IPC, asserts that a government employee who infringes their legal commitment to refrain themselves from participating in trade may be penalized with a fine, an imprisonment sentence of a year or a community service. Under clause 354 of BNS<sup>3</sup>, offence like defamation is penalized by an imprisonment term of two years, a fine, or community service or both imprisonment and fine. Community service can also be used as a form of retribution in the cases of attempted suicide. BNS through community service widens the range of penalties. BNS has also introduced several progressive alterations which might result in numerous notable advancements.

Sedition which was an offence under the British- era laws of the Indian Penal code is not an offence in BNS, instead a new offence has been introduced which deals with the offence for acts that jeopardizes

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<sup>1</sup> <https://www.foxmandal.in/changes-brought-forth-by-the-bharatiya-nyaya-sanhita-2023/>

<sup>2</sup> *The Bharatiya Nyaya Sanhita, 2023*, (Aug. 11, 2023), <https://prsindia.org/billtrack/the-bharatiya-nyaya-sanhita-2023>.

<sup>3</sup> *The Bharatiya Nyaya (Second) Sanhita, 2023*, (Dec. 12, 2023), <https://prsindia.org/billtrack/the-bharatiya-nyaya-second-sanhita-2023>.

the sovereignty of India. It includes terrorism and terrorist acts as separate offence and acknowledges these crimes under clause 111 of BNS. The clause states “A person is said to have committed a terrorist act if he commits any act in India or any other country to threaten the unity, integrity, security of India, to intimidate the general public or a segment thereof, or to disturb public order.”<sup>4</sup> kidnapping, extortion, minor crimes and cybercrimes committed by a criminal syndicate are inclusive within the ambit of organized crimes. It has also included petty organized crime as a form of offence, petty organized crimes include, pickpocketing, selling of government exam papers, or any other crime which is committed by members of some syndicate or group or a gang. This offense is penalized by imprisonment for one to seven years and a fine. This punishment is differentiated between an offense which is committed by a gang member or committed by an individual acting alone. For instance, the penalty for the offence of theft is up to three years of imprisonment, but when the same act is carried out by a gang or group, the penalty ranges from one to seven years of imprisonment. under BNS. ‘Snatching’ is introduced as an offence under clause 302 of BNS, which imposes penalties such as 3 years imprisonment, fine or both<sup>5</sup>. Along with these changes a notable change is brought by the BNS with the introduction of clause 69, which calls attention to sexual activities taking place under the semblance of fake marriage and committed through deceptive means. Penalty for this offence includes imprisonment up to 10 years, served simultaneously with a fine. Mob Lynching or murder by a Quinet or more people on the ground of caste, language, place of birth, beliefs is explicitly addressed under clause 101(2) which is punishable by life imprisonment, with term that cannot be less than 7 years, a fine or death penalty.

The BNS has replaced several terminologies of the Former code IPC. Terms like “Lunatic person” and “person of unsound mind” is replaced by “person with mental illness” or individual “having an intellectual disability”. Clauses section 22 and 28(b) of the BNS puts light upon this modification. Section 106(2) of BNS, deals with the hit and run case, the punishment now is a fine up to seven lakhs' rupees and a 10-year imprisonment<sup>6</sup> which is like that of murder, which did not amount to culpable homicide. The inclusion of this provision triggered a nationwide protest from the transport sector majorly including truck drivers in January 2024.

It can be observed that, efforts were put to promote gender equality by government through various clauses. In the former IPC, Human trafficking and human smuggling of girls under 21 is prohibited by

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<sup>4</sup> Live Law, *Balancing Free Speech And National Security: A Critical Analysis Of Section 152 Of The Bhartiya Nyaya Sanhita And Section 124-A Of The IPC*, (June 2, 2024), <https://www.livelaw.in/lawschool/articles/balancing-free-speech-national-security-critical-analysis-section-152-bhartiya-nyaya-sanhita-section-124-a-ipc-259465>.

<sup>5</sup> *Bhartiya Nyaya Sanhita - Comparative Analysis of Indian Penal Code 1860*, (Mar. 11, 2024), <https://www.lingayasvidyapeeth.edu.in/bhartiya-nyaya-sanhita-comparative-analysis-of-indian-penal-code-1860/>.

<sup>6</sup> *Analysis Of The three new criminal laws*, ONE STOP SOLUTION FOR GST, INCOME TAX, FEMA, SEZ, IMPORT-EXPORT AND CORPORATE LAWS IN INDIA, A USEFUL PORTAL FOR PROFESSIONALS, TRADE AND INDUSTRY, [https://www.taxmanagementindia.com/visitor/detail\\_article.asp?ArticleID=12825#:~:text=BNSS,%20which%20replaces%20CrPC,%20now,instead%20of%20the%20earlier%20167](https://www.taxmanagementindia.com/visitor/detail_article.asp?ArticleID=12825#:~:text=BNSS,%20which%20replaces%20CrPC,%20now,instead%20of%20the%20earlier%20167). (last visited Aug. 18, 2024).

law but now it extends to shield importation of boys under age 18 for homogenous actions. The Bhartiya Nyaya Sanhita has also adopted several stronger and efficient laws to address crimes such as sexual misconduct at workplace, increased punishments for crime like Rape, according to section 376 of IPC earlier the imprisonment term was seven years which in the latter BNS has been increased to ten years. Clause 70 of BNS mentions death penalty or imprisonment for not less than 20 years, which might extend to imprisonment for the remaining years of the offender's life, also including a fine as a form of punishment for those accountable of gang raping a female below 18 years, (earlier 16 years under IPC).<sup>7</sup> The BNS also aligns with certain supreme court rulings such as excluding adultery as an offence, however it retains section 498 of IPC which punishes a man who lures the wife of another person to commit sexual intercourse with any other person.

Though steps are taken to promote gender neutrality but still there is no progress to still recognize that, no matter what the gender is, rape and sexual assault can be committed by people of all gender including men, women, transgender and the victims of these crimes can also be gender neutral. But still the definition of rape as per clause 63 includes rape can only be committed by a man on a woman. It has also not incorporated numerous important recommendations which were formulated by the Justice Verma Committee and Supreme court on ameliorating crime against women. Clause 67 Of chapter V of BNS talks about offence of marital rape when sexual intercourse is committed by a husband on his wife during period of separation. The punishment of this offence is imprisonment ranging from two years to seven years in addition with a fine<sup>8</sup>. But still, marital rape altogether is not criminalized. In the former IPC, section 377 stated that "Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with [imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine." But no such provision is mentioned in the BNS, which is a big setback stone for gender neutrality. This implies that rape of a major male will not be considered as an offence under BNS, neither will having unnatural intercourse with an animal. Protection of males against this gruesome offence of rape has been totally neglected by the BNS and when sexual offences and cases of rape against men are being reported more frequently, it will be difficult to serve justice to the male victims.

Other key issues in BNS includes overlap between the provisions of IPC, BNS and special laws. For instance, clause 146 of BNS and section 374 of IPC asserts, imprisonment for a year, a fine or both for unlawful compulsory labor, and it is also a cognizable and bailable offence

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<sup>7</sup> Fox Mandal, *Changes Brought Forth by the Bharatiya Nyaya Sanhita, 2023*, Lexology (July 4, 2024), <https://www.lexology.com/library/detail.aspx?g=8b6e523a-8ba1-4575-9408-c58a70cd31cc>.

<sup>8</sup> *View of CRITICAL ANALYSIS OF THE BHARATIYA NYAYA SANHITA BILL 2023 WITH SPECIAL REGARD TO LAWS CONCERNING RAPE AND UNNATURAL OFFENCES*, <https://maglaw.puchd.ac.in/index.php/maglaw/article/view/111/22>.

but under The Bonded labor System (Abolition) act, 1976 it is imprisonment up to 3 years, and a fine of Rs.2000. The term mental illness, mentioned under clause 2(19), which replaces the term ‘unsound mind’ might create some errors because mental illness refers to a wide spectrum of mental health conditions or the disorders that might affect the mood, thinking or behavior of an individual. Mental illness includes conditions like depression, anxiety disorders, eating disorders, schizophrenia or some kinds of obsessive or addictive behaviors. However, it does not incorporate mental retardation, which is defined as a condition of arrested or incomplete mental development, particularly marked by below-average intelligence. However, after the recommendation of standing committee on home affairs, the term “unsound mind” was again restituted by replacing the term mental illness because the latter term was vague in nature and its definition accommodated symptoms like mood swings, anxiety etc., as it was highly being criticized.

### **Bhartiya Nagarik Suraksha Sanhita:**

The initial Code of Criminal Procedure was first established in 1861 and was uniformly implemented throughout the British India excluding the Presidency towns, following the introduction of the Indian Penal Code in 1860. Act 10 of 1882 subsequently replaced this original Code. This Act in 1882 was introduced during a period of significant political unrest and rebellions against the British Colonial rule. It was crafted in such a manner that it aimed at suppressing dissent and curb any form of political opposition as evident from the provisions of the code about preventive arrests, restrictions on bail, etc. Since 1882, there have been sixteen legislative acts pertaining to criminal procedure. The Code was revised again in 1898, and this version was later amended by the Code of Criminal Procedure Amendment Act of 1923. In its 14th Report in 1958, the First Law Commission proposed various reforms to the criminal justice system. These recommendations were considered, leading to further changes in the Code. Finally, in 1973, Parliament enacted a new Code of Criminal Procedure based on the recommendations of the Fifth Law Commission’s Forty-First Report.

The Bharatiya Nagrik Suraksha Sanhita (BNSS), 2023 was introduced in the parliament to replace CrPC (1973) with the intent to decolonize criminal procedures in India and to make them citizen-oriented in approach.<sup>9</sup> The BNSS was introduced to bring modernization in the structure of the existing legal framework in India which draws its roots from the British colonial

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<sup>9</sup> *The Bharatiya Nagarik Suraksha Sanhita, 2023*, (Aug. 11, 2023), <https://prsindia.org/billtrack/the-bharatiya-nagarik-suraksha-sanhita-2023>.

era, bearing a lot of significance of that time period's conditions. BNSS aims for this so that contemporary issues, values and norms can be accommodated sufficiently, which is need of the hour. It also seeks to create a swifter and more efficient justice system to tackle issues such as delayed delivery due to intricate procedures, high backlog of court cases, low conviction rates, minimal use of technology in the legal system, investigation delays, and insufficient application of forensic methods. It is all set to come into force from 1 July 2024 onwards and will be applicable to the fresh cases which will be filed from then on but the older criminal code will continue to be applicable on the old cases. Various changes and new reforms have been brought in the new code of criminal procedure i.e. BNSS, while some of these are being appreciated and praised, some of them have been heavily criticised.

BNSS has introduced the concept of filing of the FIRs electronically.<sup>10</sup> These would be officially recorded once signed within three days by the informant. A preliminary inquiry would be conducted in case of cognizable offenses with imprisonment terms of three to seven years and must be completed within 14 days of receiving the information, before the FIR registration in accordance with section 173(3) of BNSS<sup>11</sup>. Additionally, it is mandatory for the police to register an FIR for any reported cognizable offenses, regardless of jurisdiction i.e. "Zero FIR". After registration of the FIR, it can be transferred to the appropriate police station for investigation<sup>1</sup>.

The revised version of BNSS also permits the use of handcuffs during arrests but only under certain circumstances. Handcuffs can only be used in case of habitual offenders who have escaped custody<sup>12</sup>, or individuals who have committed serious offences such as rape, acid attacks or offenses against the state. This provision seems to be in conflict with the Supreme Court rulings and the National Human Rights Commission guidelines. In *Prem Shankar Shukla v. Delhi Administration*, AIR, 1980 SC 1535, the Hon'ble Supreme Court of India held that handcuffing is an inhumane act and arbitrary in nature and it is also violative to Article 21 of the Indian Constitution. Thus, the Standing Committee (2023) suggested removing economic offenses from the list of crimes for which handcuffs can be used, and the BNSS has eliminated this category<sup>2</sup>.

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<sup>10</sup> 506LS Pre..pmd, (Dec. 20, 2023), [https://www.livelaw.in/pdf\\_upload/bharatiya-nagarik-suraksha-sanhita-511325.pdf](https://www.livelaw.in/pdf_upload/bharatiya-nagarik-suraksha-sanhita-511325.pdf).

<sup>11</sup> *The Bharatiya Nagarik Suraksha (Second) Sanhita*, 2023, (Dec. 12, 2023), <https://prsindia.org/billtrack/the-bharatiya-nagarik-suraksha-second-sanhita-2023>.

<sup>12</sup> *Overview of the Bharatiya Nagarik Suraksha Sanhita, 2023 - azb*, <https://www.azbpartners.com/bank/overview-of-the-bharatiya-nagarik-suraksha-sanhita-2023/>.

According to section 176 of the BNSS, offenses with a minimum punishment of seven years imprisonment require a forensic investigation<sup>13</sup>. Forensic experts must visit the crime scenes to collect evidence and document the process using electronic devices such as mobile phones. In case a state does not have forensic facilities, it must avail these services from another state. These experts are given two main tasks to perform i.e. collecting of evidences from the crime scenes and documenting their procedures<sup>3</sup>.

In the older code of criminal procedure of India, it is provided that an undertrial prisoner must be released on a personal bond if they have served half the maximum imprisonment term for an offense excluding offenses punishable by death. This provision has been maintained under BNSS and it additionally stipulates that the first-time offenders are eligible for bail after serving one-third of the maximum sentence. However, this provision is not applicable under certain circumstances where the offenses are punishable with life imprisonment and cases where an investigation, inquiry, or trial for multiple offenses or in multiple cases is pending, which is again in line with section 479 of the CrPC<sup>14</sup>. Since chargesheets often include multiple offenses, this could render many undertrial prisoners, ineligible for mandatory bail. For example, money laundering is punishable under both the Prevention of Money Laundering Act, 2002, and the IPC. Persons accused in such cases will not be eligible to obtain mandatory bail.

Plea bargaining which was introduced in the CrPC in 2005<sup>15</sup> is an agreement where the accused pleads guilty in exchange for a lesser offense or reduced sentence. It is not allowed for offenses which are punishable by death, life imprisonment, or imprisonment exceeding seven years<sup>4</sup>. The BNSS retains the provisions for plea bargaining under sections 289 to 300, which limits plea bargaining to sentence bargaining. Additionally, the BNSS restricts the timeframe for plea bargaining, requiring the accused to submit the application within 30 days from the date of charges are framed<sup>5</sup>.

In 2005, the CrPC was amended to authorize a Magistrate to obtain handwriting or signature specimens from arrested individuals. The BNSS expands this provision by granting the Magistrate the authority to also collect finger impressions and voice samples, and it allows for the collection of such data from individuals not under arrest during any investigation. The

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<sup>13</sup> (July 20, 2023), <https://p39ablog.com/2024/07/annotated-comparison-of-bharatiya-nagarik-suraksha-sanhita-2023-and-the-code-of-criminal-procedure-1973/>.

<sup>14</sup> *Overview of the Bharatiya Nagarik Suraksha Sanhita, 2023 - azb*, <https://www.azbpartners.com/bank/overview-of-the-bharatiya-nagarik-suraksha-sanhita-2023/>.

<sup>15</sup> *Overview of the Bharatiya Nagarik Suraksha Sanhita, 2023 - azb*, <https://www.azbpartners.com/bank/overview-of-the-bharatiya-nagarik-suraksha-sanhita-2023/>.

Criminal Procedure (Identification) Act 2022, permits the collection of a broader range of data, including fingerprints, handwriting and biological samples, from convicts, arrested individuals, and even non-accused persons, with the data being stored for up to 75 years. Given the recent enactment of this broader law for data collection from criminals and accused individuals, the necessity for retaining and expanding data collection provisions in the BNSS is unclear. Also, the constitutional validity of the 2022 Act is currently being reviewed by the Delhi High Court in the case of *Harshit Goel v. Union of India*<sup>16</sup>.

There have been minimal advancements in the rights of arrestees under the BNSS, except for the provision allowing an arrestee to inform any person, including their lawyer, about their arrest, expanding from just friends and relatives. Concerning the arrest of women, the BNSS mandates that the police must inform the women's relatives about her whereabouts and details of her arrest. Section 190 of the BNSS which is aligned with the judgement of *Satender Kumar Antil* case, specifies that upon filing a charge-sheet<sup>17</sup>, an accused person does not need to be arrested. Instead, if the person was not arrested during the investigation, the police officer must take security from them for their appearance before the magistrate. The provision further states that the Magistrate receiving such a report cannot reject it solely because the accused was not taken into custody.

Section 187 of the BNSS allows up to 15 days of police custody, usable intermittently within the initial 40 or 60 days of the total 60 or 90 days of judicial custody. Traditionally limited to 24 hours under the constitution and CrPC, this can extend to 15 days by Magistrates if needed for investigation. Extensions in judicial custody are possible, but total detention cannot exceed 60 or 90 days, based on the offense. BNSS permits the 15-day police custody within the initial 40 or 60 days as needed. This provision raises concerns regarding potential infringements of Article 21, which guarantees personal liberty as a fundamental right.<sup>18</sup> This change diverges from constitutional and CrPC norms that limits police custody to 24 hours, posing a risk of extended detention without bail if the full 15-day period is not utilized by law enforcement.

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<sup>16</sup> Live Law, *Prisoners' Biometrics: Delhi HC Issues Notice On Plea Challenging Criminal Procedure (Identification) Act, Centre Objects On Maintainability*, (Apr. 21, 2022), <https://www.livelaw.in/news-updates/delhi-high-court-prisoners-biometrics-act-maintainability-197134>.

<sup>17</sup> Sunishth Goyal, *An Exhaustive Comparative Analysis of Code of Criminal Procedure, 1973 and Bharatiya Nagarik Suraksha Sanhita, 2023*, (Aug. 20, 2023), <https://www.barandbench.com/columns/comparative-analysis-of-code-of-criminal-procedure-1973-and-bharatiya-nagarik-suraksha-sanhita-2023>.

<sup>18</sup> Sunishth Goyal, *An Exhaustive Comparative Analysis of Code of Criminal Procedure, 1973 and Bharatiya Nagarik Suraksha Sanhita, 2023*, (Aug. 20, 2023), <https://www.barandbench.com/columns/comparative-analysis-of-code-of-criminal-procedure-1973-and-bharatiya-nagarik-suraksha-sanhita-2023>.



**Bhartiya Sakshya Adhiniyam:**

‘Sakshya’, a Sanskrit word has two meanings according to the people from India and its neighboring country Nepal. It can mean ‘evidence’, ‘gift of god’ or ‘witness’. Evidence means “the available body of facts or information indicating whether a belief or proposition is true or valid”. In the legal scenario evidence acts as the eyes and ears of the court. Faylor defines evidence as “all means which tend to prove or disprove any matter, fact, the truth of which is submitted to judicial investigation<sup>19</sup>. Hence, evidence helps confirm or refute the existence of a particular fact or scenario. The party asserting the presence of a fact must provide proof of its existence, while the party denying it must either disprove it or illustrate its non-existence. In the ancient India, Hindu shastras used to withholds a deep knowledge and information on evidence which were earlier used by the judges and kings to deliver justice. 4 kinds of evidences were admissible by the Dharam shastras including Lekhya(written), Sakshi(oral), Bhog (possessions owned) and Divya (divine tests).

In the modern era, the Indian Evidence Act of 1872 defined, amended, and reinforced the law of evidence in the Indian legal system. This act applied to the entire country, including martial courts, but excluded proceedings before an arbitrator. However, this act will now be replaced by the Bhartiya Sakshya Adhiniyam, 2023. Introduced by the government in the Lok Sabha on August 11, 2023, this new bill focuses to replace the colonial-era law and will come into effect on July 1, 2024.<sup>20</sup> The Bhartiya Sakshya Adhiniyam introduces several reforms, though it retains much of the content from the Indian Evidence Act. Its primary objective is to modernize the presentation of evidence, it introduces such provisions which reflects the technological aggrandizements and focuses to provide a more detailed approach for the admissibility of evidence in the legal proceedings, the same is achieved by incorporating changes related to electronic evidence, including definitions and admissibility procedures for the same.

The Indian evidence act was composed of 167 sections but the Bhartiya sakshya adhiniyam has a total of 170 section. Inclusive of 23 replaced provisions of IEA, 1872. Like the Indian Evidence Act, 1872, the new bill is applied to all the judicial proceeding including martial courts, but excluding affidavit<sup>21</sup> presented to any court or officer or proceedings hitherto an

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<sup>19</sup> *Historical Background Of Evidence Law In India: With Special Reference To The Indian Evidence Act, 1872*, <https://legalserviceindia.com/legal/article-7229-historical-background-of-evidence-law-in-india-with-special-reference-to-the-indian-evidence-act-1872.html>.

<sup>20</sup> *The Bharatiya Sakshya (Second) Bill, 2023*, (Dec. 12, 2023), <https://prsindia.org/billtrack/the-bharatiya-sakshya-second-bill-2023>.

<sup>21</sup> (July 20, 2023), <https://p39ablog.com/2024/07/annotated-comparison-of-bharatiya-sakshya-adhiniyam-2023-and-indian-evidence-act-1872-2/>.

arbitrator. It provides comprehensive provisions related to the relevancy of facts, and also conveys the concept of admissibility of evidence, by defining its scope and relevance in the legal scenario. An outstanding feature of the latest act is its provisions for electronic records, including its definition and admissibility procedures. It clarifies that electronic and the digital records have the same effect, enforceability and validity similar to any other document. These provisions ensures that the legal structure keeps up with societal and technological changes.

In the Chapter I, section 2 of the Bhartiya Sakshya Adhiniyam, reinforced definitions of “conclusive proof”, “may presume”, “shall presume” into a single clause. Provisions regarding admissibility of electronic or digital records as evidence is valid. These includes, electronic records which have been printed or retained in an optical or magnetic media, which includes semiconductor memory, generated by a computer, smartphone, laptop etc. The information must be retained and processed by a computer or a set of computers<sup>22</sup>. The electronic records were categorized as a form of secondary evidence in the former Indian evidence act but in the BSA it is classified as primary evidence. The BSA uses more specific and clearer language and is able to somewhat minimize ambiguity and vagueness present in the Indian Evidence Act.

Regarding the provisions related to confessions, a change has been made in section 24 of the evidence act (which states that “any confession made by an accused person, if the confession has been made under inducement, threat, or promise is irrelevant.”) Under section 22 of the BSA, two provisions have been added which permits certain kinds of confessions to be considered relevant. Sections 25 and 26 of the Evidence Act, which deal with confessions made to a police officer and confessions in general, have been consolidated under Section 23 of the Bill, with the addition of a provision<sup>23</sup>. This provision sets out that, any information obtained as a result of information provided by an accused person in police custody, insofar as it relates to a discovered fact, may be admissible in evidence, regardless of whether it constitutes as a confession. In quintessence, this provision allows for the use of information obtained in custody for further investigation or to corroborate other evidence related to the information provided. The Bhartiya Sakshya Adhiniyam also addresses the joint trials, and clarifies the procedure of a trial, where multiple people are involved and the accused has not acknowledged or has decamped to an arrest permit.

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<sup>22</sup> Cyril Shroff, *The Bharatiya Sakshya Bill, 2023: An Overview of the changes to Indian Evidence Act, 1872* (3/3), Lexology (Jan. 2, 2024), <https://www.lexology.com/library/detail.aspx?g=8ca4eb70-8e3f-4da8-a3a9-61b28e6e2aaa>.

<sup>23</sup> [Comparative Study] *Bharatiya Sakshya Adhiniyam, 2023 (BSA) & Indian Evidence Act, 1872*, (Jan. 4, 2024), <https://www.taxmann.com/post/blog/comparative-study-bharatiya-sakshya-adhiniyam-bsa-indian-evidence-act>.

The Act is able to accomplish the removal of certain colonial terms are references which were still being used after independence and replacing those terms with “more relevant and contemporary language”. The referred terms were inclusive of ‘vakil’ and ‘pleader’, which now is ‘advocate’, ‘lunatic’ to ‘person of unsound mind’ which is reflexive of a more sensitive legal lexicon. The aim to replace such words was to broaden the effect of decolonizing and modernizing the scenario of Indian legal system. Along with-it BSA has enhanced safeguards for witness protection by introducing protective measures like “relocating the witnesses, anonymity provisions, and witness intimidation penalties.”<sup>24</sup> Special courts have also been established for protecting the witness in scenario including sensitive cases, the aim behind this was to prioritize the safety and security of witness so that the justice can be delivered effortlessly. Psychological support is also provided to the witness by administering counselling for the trauma experienced by some witnesses during the legal procedure.

In the Indian Evidence Act, 1872, section 52 to 55, states about character evidence. The act signifies when an individual’s character can be included as evidence. As per section 55 of the Indian evidence act, 1872, “the term character includes both repute and disposition of a person.” Repute means what an individual’s impression is left on the person they are dealing with and disposition includes fundamental traits of an individual. It has evidentiary value both in the civil and criminal cases. The permitted use of character evidence has a more extensive application in the IEA, 1872 which might increase the potential for prejudice and bias due to the prior conduct or character traits of the defendant or witness. With reduced judicial control and fewer limitations on admissibility, the equity of legal proceedings may be adversely affected. This heightens the likelihood that juries or judges will rely on the character or reputation of the defendant or witness rather than focusing exclusively on the pertinent facts of the case. But in BNS the use of character evidence is only allowed for some specific cases, this step was taken to avoid the biasness and prejudice which was based on an individual's past behavior or reputation. The use of character evidence is allowed only in cases where someone’s repute or disposition is directly pertinent to the imposed charge or reliability of a witness.

The BSA also aims to clarify the permissibility of accomplice testimony by addressing the inconsistencies faced in the IEA, 1872. It mandates the corroboration of accomplice testimony in most cases to ensure its reliability and guard against false accusations, promoting fairness

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<sup>24</sup> *Paradigm Shift in India’s Criminal Justice System: Dissecting Bharatiya Sakshya Adhiniyam*, 2023, SCC Times (Apr. 29, 2024), <https://www.scconline.com/blog/post/2024/04/29/paradigm-shift-in-india-criminal-justice-system-bharatiya-sakshya-adhiniyam-2023/>.

by balancing the use of such testimony in investigations with safeguards against misuse and wrongful convictions<sup>25</sup>. In contrast, the IEA contains conflicting provisions regarding the credibility of accomplice testimony, which might lead to confusion and potential misinterpretations in legal proceedings. It allows for uncorroborated accomplice testimony in certain instances, risking convictions based on potentially unreliable evidence and raising fairness concerns due to the resulting uncertainties for both the accused and the prosecution. Section 63 of the Indian Evidence Act is amended by the introduction of section 58 of the Bhartiya Sakshya Adhiniyam, 2023,<sup>26</sup> this new amendment expands the scope of usage of secondary evidence, as it presents a defined set of digital records which could be used for the references purpose in the courts. Section 65B of the Indian Evidence Act, 1872, which previously required a certificate for electronic records, has been simplified and retained. This revised provision allows electronic and other records to be treated with equal importance, reflecting a broader interpretation of the law.

Though the structuring of the Bhartiya Sakshya Adhiniyam is built different but the crux or the basis of the Evidence Act still remains intact. The concept of 'leading questions' has been updated to address the loophole in Section 141 of the Indian Evidence Act, 1872. Previously, the provision was too broad and depended on the suggestive nature of the questions. The modification aims to refine and clarify the rules surrounding leading questions.

### **Conclusion:**

The implementations of the Bhartiya Nyaya Samhita, Bhartiya Sakshya Adhiniyam and the Bhartiya Nagarik Suraksha Sanhita has been commenced from the 1<sup>st</sup> July, 2024 itself. The introduction of these new laws was done with the objective to reshape and stabilize the provisions which were related to different subject matters or earlier were not present in the legal system. The change with time demanded some changes in the laws which was tried to establish by introduction of these new laws. Though most certainly there are some loopholes in the new provisions but with change in time new amendments would be introduced to address those issues as well. Though, it is noteworthy that introduction of new provisions was a huge step towards the evolution of the criminal laws in India. Post implementation its efficiency would be most certainly proved.

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<sup>25</sup> *Implementing Bharatiya Sakshya Adhiniyam*, (Mar. 1, 2024), <https://www.drishtiias.com/daily-updates/daily-news-editorials/implementing-bharatiya-sakshya-adhiniyam>.

<sup>26</sup> *Comparison Between IEA & BSA | PDF | Evidence (Law) | Judgment (Law)*, Evidence (Law) <https://www.scribd.com/document/725155309/Comparison-between-IEA-BSA>.