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# TRANSITION FROM IPC TO BHARATIYA NYAYA SANHITA: A CRITICAL ANALYSIS

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## ABSTRACT

The enactment of the Bharatiya Nyaya Sanhita (BNS), 2023, replacing the Indian Penal Code (IPC) of 1860, represents one of the most consequential legislative overhauls in post-Independence India. This paper critically examines the historical necessity, structural changes, substantive modifications, and contentious provisions of this transition. It evaluates whether the BNS achieves its stated aim of decolonising Indian criminal law or merely reorganises colonial-era frameworks with cosmetic changes. Drawing on legislative debates, judicial precedents, and academic commentary, this paper argues that while the BNS introduces meaningful reforms particularly concerning terrorism, organised crime, and gender-based offences it simultaneously reproduces colonial control mechanisms and raises serious concerns about civil liberties, federalism, and judicial capacity.

**Keywords:** BNS 2023, IPC 1860, Criminal Law Reform, Decolonisation, Sedition, Organised Crime, India

## **1. INTRODUCTION:**

On August 11, 2023, the Indian Parliament passed three landmark bills — the Bharatiya Nyaya Sanhita (BNS), the Bharatiya Nagarik Suraksha Sanhita (BNSS), and the Bharatiya Sakshya Adhinyam (BSA) — replacing the Indian Penal Code, 1860, the Code of Criminal Procedure, 1973, and the Indian Evidence Act, 1872, respectively. These three statutes, enacted by the British colonial administration and amended multiple times over 163 years, were simultaneously repealed. The BNS came into force on July 1, 2024.

The colonial origins of the IPC have long been a subject of scholarly and political debate. Drafted by Lord Macaulay's First Law Commission and enacted in 1860, the IPC was designed primarily as an instrument of administrative control over a subject population, not as a charter of justice for free citizens. However, despite this colonial genesis, the IPC survived decades of independent governance, largely because courts and legislators adapted its broad provisions to evolving constitutional values.

The question this paper addresses is both historical and contemporary: does the BNS represent a genuine departure from colonial criminal jurisprudence, or does it preserve — and in some respects strengthen — the structural features of that jurisprudence under a new name? This analysis proceeds through the following sections: the historical and political context of the reform; structural and organisational changes; substantive legal modifications; critical concerns; and an overall assessment.

## **2. HISTORICAL AND POLITICAL CONTEXT**

The IPC, 1860, was not India's first experience of codified criminal law, but it was by far the most comprehensive and enduring. Macaulay's draft, completed in 1837, drew heavily from English common law, French penal theory, and the administrative imperatives of the East India Company. It prioritised predictability and uniformity values important to an occupying power managing a vast and diverse territory over the restorative or community-based norms found in pre-colonial Indian legal traditions. After Independence in 1947, various committees recommended criminal law reform. The Law Commission of India, across its many reports, flagged obsolete offences, inadequate penalties for emerging crimes, and procedural inefficiencies. The 42nd Report (1971), the 156th Report (1997), the 198th Report (2006), and the Malimath Committee Report (2003) all identified specific gaps. comprehensive reform

remained elusive, hampered by political inertia, competing priorities, and the sheer complexity of amending a statute embedded in decades of judicial interpretation.

The political context of the 2023 reforms is significant. The Union Government framed the exercise explicitly as an act of "decolonisation," situating it within a broader cultural and ideological project of reasserting Indian identity in legal institutions. Home Minister Amit Shah's parliamentary speeches described the IPC as a tool of "British domination" and the BNS as an expression of India's sovereign legal identity. Critics, including opposition legislators and civil society groups, questioned whether renaming statutes and using Sanskrit-derived terminology constitutes meaningful decolonisation, or whether it is primarily symbolic.

### 3. Structural and Organisational Changes

At a structural level, the BNS condenses the IPC's 511 sections into 358 sections. This reduction does not indicate a narrowing of criminal liability — rather, it reflects the consolidation of related provisions, the deletion of genuinely redundant offences, and the incorporation of several standalone statutes into the BNS framework. The organisation of chapters has been revised, with offences against the state now appearing after offences against persons, a change the government described as symbolic of placing citizens before the state.

The BNS introduces a dedicated chapter on terrorism (Chapter VII) and organised crime, drawing substantially from the Unlawful Activities Prevention Act (UAPA) and the Maharashtra Control of Organised Crime Act (MCOCA). This mainstreaming of terrorism-related provisions into the general penal code is a significant structural innovation, though it also imports the definitional breadth and evidentiary relaxations of those special statutes.

ASPECT	IPC, 1860	BNS, 2023
Total sections	511	358
Sedition provision	Section 124A (retained after SC stay)	Section 152 (broader formulation)
Organised crime	No specific provision	Section 111 (new)
Terrorism offences	Absent (covered by UAPA)	Section 113 (new, Chapter VII)

ASPECT	IPC, 1860	BNS, 2023
Sexual offences	Sections 375–376D (post-2013 amendments)	Sections 63–70 (expanded, gang rape definition broadened)
Community service	Not provided	Introduced as alternative punishment
Marital rape	Exemption retained	Exemption retained
Death penalty offences	Specified	Retained and expanded

#### 4. Key Substantive Changes

##### 4.1 Sedition: Repeal or Repackaging?

One of the most debated provisions of the reform concerns sedition. Section 124A of the IPC which criminalised "exciting disaffection" against the government had been challenged before the Supreme Court in *S.G. Vombatkere v. Union of India* (2022), where a bench led by the then Chief Justice stayed all prosecutions under the provision pending review. The government represented to the Court that Section 124A would be re-examined. The BNS omits Section 124A by that designation, which the government cited as evidence of decolonisation. Section 152 of the BNS creates a new offence of "acts endangering sovereignty, unity and integrity of India," which criminalises acts that "excite or attempt to excite, secession, armed rebellion or subversive activities" or endanger "sovereignty or unity and integrity of India." Critics, including the Editors Guild of India and multiple senior advocates, have argued that Section 152 is broader than Section 124A in some respects: it does not require the element of incitement to violence that the Supreme Court read into Section 124A in *Kedar Nath Singh v. State of Bihar* (1962), and its language encompasses a wider range of expression. The Parliamentary Standing Committee on Home Affairs, which reviewed the draft BNS, recommended clarifications that were only partially incorporated.

##### 4.2 Organised Crime and Terrorism

Section 111 of the BNS introduces the offence of "organised crime," defining it as any continuing unlawful activity by a person singly or jointly as a member of an organised crime syndicate. The definition imports the definitional framework of MCOCA but extends it

nationally. The penalty provisions are severe, including death or life imprisonment in cases where organised crime results in death. Section 113 similarly criminalises terrorist acts with a broad definitional net.

The mainstreaming of these provisions into the BNS rather than keeping them in specialised statutes with their own procedural safeguards and judicial oversight mechanisms has been criticised by criminal law scholars. Specialised anti-terror statutes at least carry a degree of political visibility; embedding equivalent provisions in the general penal code may reduce public scrutiny while normalising their application in ordinary criminal proceedings.

### **4.3 Gender-Based Offences**

The BNS retains and in some respects expands the amendments introduced by the Criminal Law (Amendment) Act, 2013, which followed the horrific gang rape case of December 2012. The definition of rape under Section 63 of the BNS mirrors the expanded Section 375 IPC. The BNS also creates a specific offence for sexual intercourse obtained by false promise of marriage (Section 69), an offence that has attracted significant academic debate regarding its interaction with women's autonomy and the risk of misuse against interfaith couples. The most glaring omission remains the marital rape exception. Exception 2 to Section 63 of the BNS, like its IPC predecessor, exempts sexual intercourse by a man with his own wife, the wife not being under eighteen years of age. The Delhi High Court's divided bench judgment in *RIT Foundation v. Union of India* (2022) had highlighted the unconstitutionality of this exception, and the Supreme Court was seized of the matter. The legislature's decision to retain the exception, despite these proceedings and despite substantial civil society advocacy, reflects a deliberate policy choice that continues to place marital relations outside the full protection of criminal law.

### **4.4 New Offences and Punishments**

The BNS introduces several offences absent from the IPC. Section 69 addresses deceptive sexual relations. Section 111 addresses organised crime. Section 113 addresses terrorism. Section 117 criminalises grievous hurt by weapons. Additionally, the BNS introduces community service as an alternative punishment for minor offences — a reform widely welcomed by penologists and legal aid advocates as a step toward rehabilitative justice. The BNS also explicitly criminalises "hit-and-run" cases through enhanced penalties, responding

to public demand following a series of high-profile incidents. However, the sudden announcement of these provisions in early 2024, ahead of the BNS's July 1 commencement, sparked a nationwide protest by truck drivers who feared disproportionate penalties, illustrating the gap between legislative intent and implementation readiness.

## **5. Critical Concerns**

### **5.1 Legislative Process and Consultation**

The process by which the three bills were passed has itself attracted criticism. All three were introduced and passed in a single parliamentary session in August 2023, during which a large number of opposition members of parliament had been suspended. The bills were referred to the Parliamentary Standing Committee on Home Affairs, which submitted its report in November 2023; several recommendations were incorporated into revised bills introduced and passed in the winter session. However, the speed of the legislative process meant that state governments, bar associations, and the public had limited opportunity for substantive engagement. A reform of this magnitude touching every aspect of criminal law arguably warranted a more deliberative process, including inter-governmental consultation given that criminal law is a Concurrent List subject.

### **5.2 Federalism and Concurrent List Concerns**

Criminal law falls under Entry 1 of the Concurrent List of the Seventh Schedule to the Constitution, meaning both Parliament and state legislatures have the power to legislate. Several states, including Tamil Nadu, West Bengal, Kerala, and Telangana, had existing or proposed amendments to the CrPC and Evidence Act. The enactment of the BNSS and BSA effectively displaces this legislative space. Additionally, states with their own organised crime statutes such as Maharashtra, Gujarat, and Karnataka must now navigate the interaction between those statutes and the newly mainstreamed BNS provisions, creating potential for legal uncertainty.

### **5.3 Implementation Challenges**

Perhaps the most immediate practical concern is implementation readiness. The changeover from IPC to BNS required the retraining of the entire criminal justice ecosystem: police officers, prosecutors, defence lawyers, magistrates, and judges. Section numbers have changed

comprehensively, meaning that a lawyer who has practised criminal law for thirty years must relearn the statutory map. Courts handling pending matters under the IPC must maintain parallel familiarity with both frameworks. The National Law University network and Bar Councils have offered transitional training programmes, but the sheer scale of India's criminal justice system over 40 million pending cases in subordinate courts makes a smooth transition inherently challenging.

#### **5.4 Civil Liberties and Over-Criminalisation**

The combination of broadly defined terrorism and organised crime offences, the reformulated sedition-equivalent, and the retention of provisions criminalising certain speech acts suggests that the BNS, like the IPC, can serve as a tool of political control when misused. The preventive detention architecture that surrounds these provisions long pre-trial detention periods, bail restrictions, and special courts was not substantially altered by the BNSS reform. India's crisis of undertrial imprisonment, where approximately 77 percent of prison inmates are awaiting trial, was inadequately addressed. The BNS's focus on offences and punishments, without a corresponding reform of bail jurisprudence and speedy trial guarantees, risks reproducing the structural violence of the pre-reform system.

#### **6. Assessment: Reform, Repackaging, or Something In Between?**

Any honest assessment of the BNS must resist two tempting extremes: uncritical celebration of the reform as historic decolonisation, and wholesale dismissal as mere renaming. The reality is more nuanced. The BNS makes genuine advances in several areas. The introduction of community service as punishment, the consolidation of terrorism and organised crime provisions, the expanded sexual offence definitions, the explicit criminalisation of certain forms of fraud and deception, and the modest streamlining of the statutory text are all positive developments. The symbolic act of enacting India's criminal law in a Hindi-derived title has resonance for those who view the IPC's colonial nomenclature as a daily reminder of subjugation. At the same time, the BNS fails to break structurally with its colonial predecessor in the ways that would most matter for justice delivery. The sedition-equivalent is broader, not narrower. The marital rape exception is retained. The undertrial crisis is unaddressed. The implementation timeline was rushed. The consultation process was inadequate. And the mainstreaming of quasi-emergency provisions into the general penal code expands the coercive reach of the state. Central ThesisThe BNS represents a partial, selective modernisation of

Indian criminal law rather than the comprehensive, rights-anchored reform that India's criminal justice system requires. It is best understood not as a break from the colonial past, but as the latest iteration of a continuing negotiation between the demands of state power and the rights of citizens a negotiation that the colonial framework itself institutionalised and that remains unresolved. Comparative experience is instructive. Several post-colonial jurisdictions including South Africa, Sri Lanka, and many African nations have undertaken comprehensive criminal law reforms that explicitly engaged with the legacy of colonial law while building on indigenous legal traditions and international human rights standards. India's reform, by contrast, was largely internal in its consultative framework and thin in its engagement with comparative constitutional criminal law. A more robust reform process would have considered the Model Penal Code approach developed in American jurisprudence, the codification exercises undertaken in Germany and France, and the recommendations of international bodies such as the UN Committee against Torture and the Human Rights Committee regarding India's criminal justice system.

## **7. CONCLUSION**

The transition from the IPC to the Bharatiya Nyaya Sanhita marks a watershed in the history of Indian legislation, if not yet in Indian justice. The ambition of the reform to provide India's billion-plus citizens with a criminal code that is their own is legitimate and important. The execution, however, reveals the persistent tension between genuine legal reform and political symbolism, between the impulse to modernise and the instinct to preserve state power. Future courts will shape the BNS's meaning far more than Parliament did. How judges interpret Section 152, how they apply the community service provisions, how they read the organised crime definitions against the principles of individual liberty these interpretive choices will determine whether the BNS represents a step toward justice or merely a step into a new room with the same furniture. Legal academia, civil society, and the bar have a critical role in this interpretive project, ensuring that the reform's stated values of a citizen-centred criminal law are held to account in practice.

The IPC's 163-year journey was marked as much by judicial adaptation as by legislative design. The BNS's journey is only beginning. Whether it ends in genuine transformation will depend on the commitment of every participant in India's criminal justice system to the constitutional values that the reform claimed, but did not fully deliver, to serve.

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