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# JUSTICE REIMAGINED: UNPACKING THE BHARATIYA NYAYA SANHITA'S IMPACT ON INDIA'S MARGINALIZED COMMUNITIES

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Anushka Singh, B.A.LL.B., D.E.S. Shri Navalmal Firodia Law College, Pune

## ABSTRACT

This paper critically examines the Bharatiya Nyaya Sanhita (BNS), 2023, as India's most ambitious attempt to reframe its criminal law architecture, with a specific focus on its impact on marginalized communities – including gender minorities, persons with disabilities, and economically weaker sections. While the BNS replaces the colonial-era Indian Penal Code, its reformative potential is undermined by persistent procedural and structural exclusions. Through a constitutional lens grounded in Articles 14, 15, and 21, and supported by landmark judgments such as *Navtej Singh Johar v. Union of India*, *Jeeja Ghosh v. Union of India*, and *State of Maharashtra v. Bandu*, the paper argues that procedural justice is not merely statutory but a fundamental right. The analysis reveals that despite definitional expansions (e.g., inclusion of “transgender” under Section 2(10)), substantive provisions – particularly Sections 63 to 70 on sexual offences – remain gender-specific, excluding non-binary and trans victims. Similarly, the absence of mandated procedural accommodations for disabled individuals, such as accessible summons or interpreter services, violates both constitutional guarantees and statutory obligations under the Rights of Persons with Disabilities Act, 2016. This analysis also reveals the changes made in BNS in reference to the marginalized communities. By explaining the gaps, this study contends that the BNS, in its current form, risks replicating colonial exclusions under a constitutional guise, and calls for a transformative reimagining of criminal justice that centres equity, accessibility, and dignity. This article critically examines whether the Bharatiya Nyaya Sanhita advances inclusive justice or replicates entrenched inequities under a new name. It interrogates the code's responsiveness to constitutional mandates of equality, dignity, and access to justice.

**Keywords:** Bharatiya Nyaya Sanhita (BNS), 2023, Criminal law reform, Marginalized communities, Gender minorities, Persons with disabilities, Economically weaker sections, Procedural justice, Constitutional rights, Article 14, Article 15, Article 21, Substantive due process, Reasonable accommodation, Intersectionality, Legal accessibility, Inclusive legal

drafting, Bail reform, Undertrial prisoners, Community-based justice, Judicial sensitization, Rights of Persons with Disabilities Act, 2016, Navtej Singh Johar v. Union of India, Jeeja Ghosh v. Union of India, State of Maharashtra v. Bandu, Legal aid access, Restorative justice, Procedural safeguards, Justice delivery mechanisms.

## INTRODUCTION:

From Colonial Codes to Constitutional Promises -The enactment of the Bharatiya Nyaya Sanhita (BNS)<sup>1</sup>, 2023, marks a pivotal moment in India's legal evolution – a formal departure from the colonial legacy of the Indian Penal Code (IPC)<sup>2</sup>, 1860. Drafted under British rule, the IPC was designed not to empower citizens but to regulate subjects. Its language, structure, and underlying philosophy reflected imperial priorities: control, deterrence, and uniformity over contextual justice. For over 160 years, this code remained largely unchanged, despite seismic shifts in India's constitutional landscape, social fabric, and jurisprudential ethos.

The reform initiative culminating in the BNS was driven by a growing recognition that criminal law must reflect the values of a sovereign, democratic republic and not a colonial administration and came into effect on 1<sup>st</sup> July, 2024. The IPC's rigidity, outdated terminology, and lack of sensitivity to contemporary social realities, especially around gender, disability, and economic vulnerability necessitated a reimagining of the criminal justice framework. The BNS promises modernization: streamlined procedures, digitized processes, and a more victim-centric approach. Yet, the deeper question remains – does this reform merely revise the letter of the law, or does it transform its spirit?

To answer this, one must engage with the concept of marginalization in legal discourse. Marginalization is not merely a sociological condition. It is a legal reality shaped by systemic exclusions, procedural barriers, and normative blind spots. In the context of criminal law, marginalized communities such as gender minorities, persons with disabilities, and economically weaker sections often face compounded disadvantages. These range from inaccessible legal processes and biased policing to underrepresentation in judicial narratives and policy design. The law, in its silence or ambiguity, can perpetuate these exclusions even

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<sup>1</sup> India's new Criminal Code that replaced IPC

Bharatiya Nyaya Sanhita, No. 28 of 2023, Acts of Parliament, 2023 (India).

<sup>2</sup> <https://www.indiacode.nic.in/repealedfileopen?filename=A1860-45.pdf> The **Indian Penal Code (IPC)**, u.s.c, was the official criminal code of the Republic of India, inherited from British India after independence.

when it claims neutrality.

This article critically examines whether the Bharatiya Nyaya Sanhita advances inclusive justice or replicates entrenched inequities under a new name. It interrogates the code's responsiveness to constitutional mandates of equality, dignity, and access to justice. By analysing its provisions through the lived experiences of marginalized groups, the article seeks to uncover whether the BNS is a transformative legal instrument or a cosmetic overhaul that leaves foundational injustices intact.

In doing so, the article moves beyond doctrinal analysis to engage with the constitutional promise that justice must not only be delivered but be accessible, equitable, and affirming of every citizen's humanity. The shift from IPC to BNS is not just a legislative event; it is a test of India's commitment to reimagining justice in the image of its Constitution.

## **LEGAL FRAMEWORK & METHODOLOGY:**

The Bharatiya Nyaya Sanhita (BNS), 2023, presents itself as a modernized criminal code, promising efficiency, victim-centricity, and procedural clarity. Yet, for marginalized communities – gender minorities, persons with disabilities, and economically weaker sections, the true measure of reform lies not in legislative intent but in lived experience. Law, when abstracted from social realities, risks becoming a tool of exclusion. This section bridges statutory text with the everyday encounters of those historically sidelined by the criminal justice system.

### **Key Legal Shifts – Changes made in reference to marginalized communities**

The Bharatiya Nyaya Sanhita (BNS), 2023, introduces several structural changes to India's criminal law framework, some of which bear relevance—albeit limited—to marginalized communities. One notable inclusion is Section 2(10)<sup>3</sup>, which expands the definition of gender to include “transgender,” marking a symbolic shift from the binary framing of the Indian Penal Code (IPC). However, this definitional change is not reflected in substantive provisions such as Sections 63 to 70<sup>4</sup>, which continue to define sexual offences in gender-specific terms,

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<sup>3</sup> Section 2(10) of the Bharatiya Nyaya Sanhita, 2023 defines "gender" to include male, female, and transgender persons, thereby formally recognizing gender diversity in statutory language. <https://www.indiacode.nic.in/handle/123456789/20062>

<sup>4</sup> Sections 63 to 70 of the Bharatiya Nyaya Sanhita, 2023 deal with sexual offences, including the definition of rape, punishment for rape, custodial rape, gang rape, and offences against minors, but retain gender-specific language that excludes non-female victims.

thereby excluding trans, non-binary, and male victims from legal protection under rape laws. The introduction of Section 4(f)<sup>5</sup>, which allows courts to impose community service as punishment for certain offences, is a progressive step toward restorative justice, but lacks procedural clarity on how it will accommodate disabled or economically disadvantaged offenders. Additionally, Section 103(2)<sup>6</sup> criminalizes mob lynching when committed by five or more persons, a long-awaited recognition of targeted violence often faced by Dalits, religious minorities, and tribal communities. Yet, the provision does not explicitly address caste-based or communal motivations, nor does it mandate victim protection protocols. The BNS also codifies offences like false promise of marriage under Section 69<sup>7</sup>, offering clearer statutory language, but fails to incorporate gender-neutral phrasing or intersectional safeguards for vulnerable complainants. While Section 106(2)<sup>8</sup> enhances punishment for hit-and-run cases involving death, raising it to ten years if the accused flees the scene, it risks disproportionately penalizing poor individuals who may lack legal awareness or access to counsel. Crucially, the BNS does not contain any dedicated clause mandating procedural accessibility for persons with disabilities—such as sign language interpretation, screen-reader compatible documents, or simplified summons—despite the constitutional guarantees under Articles 14, 15, and 21 and the statutory obligations under the Rights of Persons with Disabilities Act, 2016<sup>9</sup>. In sum, while the BNS gestures toward modernization, its engagement with the lived realities of marginalized communities remains superficial, necessitating deeper legislative reform and intersectional sensitivity.

## Legal Gaps – Changes That Require Attention

- **Marginalized communities:**

Despite its intent to modernize India's criminal law framework, the Bharatiya Nyaya Sanhita (BNS), 2023, reveals significant gaps in addressing the lived realities of marginalized

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<sup>5</sup> Section 4(f) of the Bharatiya Nyaya Sanhita, 2023 introduces community service as a new form of punishment, allowing courts to assign unpaid public work for certain offences.

<sup>6</sup> Section 103(2) of the Bharatiya Nyaya Sanhita, 2023 prescribes enhanced punishment for murder committed by a group of five or more persons acting on discriminatory grounds such as caste, religion, sex, or language.

<sup>7</sup> Section 69 of the Bharatiya Nyaya Sanhita, 2023 criminalizes sexual intercourse obtained through deceitful means, such as false promises of marriage, when it does not amount to rape.

<sup>8</sup> Section 106(2) of the Bharatiya Nyaya Sanhita, 2023 prescribes up to ten years' imprisonment and fine for causing death by rash and negligent driving and fleeing the scene without reporting the incident.

<sup>9</sup> The Rights of Persons with Disabilities Act, 2016 is a comprehensive legislation that guarantees equality, non-discrimination, and accessibility for persons with disabilities, aligning Indian law with the UN Convention on the Rights of Persons with Disabilities.

communities. While Section 2(10) expands the definition of gender to include “transgender,” this progressive gesture is undermined by the continued gender-specific framing of sexual offences under Sections 63 to 70, which define rape and related crimes exclusively in terms of male perpetrators and female victims. This not only excludes trans, non-binary, and male survivors but also contradicts constitutional mandates under Articles 14 and 15. Similarly, Section 4(f) introduces community service as an alternative punishment, yet fails to provide procedural guidelines for its equitable implementation among disabled or economically disadvantaged offenders, risking discriminatory enforcement. The newly codified offence of mob lynching under Section 103(2) criminalizes group violence involving five or more individuals, but omits any reference to caste, religion, or ethnicity—factors central to such crimes—thereby diluting its socio-legal relevance for Dalits, Adivasis, and religious minorities. Moreover, while Section 106(2) enhances punishment for hit-and-run incidents resulting in death, raising it to ten years if the accused flees the scene, it lacks safeguards for poor individuals who may abscond due to fear, illiteracy, or lack of legal counsel. Most critically, the BNS does not contain any dedicated clause mandating procedural accessibility for persons with disabilities—such as sign language interpretation, screen-reader compatible documentation, or simplified legal formats—despite the obligations under the Rights of Persons with Disabilities Act, 2016 and the constitutional guarantee of dignity under Article 21. These omissions reflect a formalistic approach to reform, one that revises statutory language without embedding inclusive justice into procedural design.

- **Gender Minorities:**

The Bharatiya Nyaya Sanhita (BNS), 2023, while introducing a broader definition of gender under Section 2(10) by including “transgender” alongside “male” and “female,” fails to translate this recognition into substantive legal protections for gender minorities. Sexual offence provisions under Sections 63 to 70 remain rigidly gender-specific, defining victims exclusively as female and perpetrators as male, thereby excluding trans, non-binary, and male survivors from statutory protection. This disconnect between definitional inclusion and procedural exclusion exemplifies a model of recognition without representation. Consider a hypothetical scenario: a transmasculine individual seeks to file a First Information Report (FIR)<sup>10</sup> after experiencing sexual assault. Despite their legal identity, the police may refuse to

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<sup>10</sup> A First Information Report (FIR) is the official written record of a cognizable offence, registered by the police under Section 173 of the Bharatiya Nagarik Suraksha Sanhita, 2023, initiating the criminal investigation process.

register the complaint under rape provisions, citing the gendered language of the statute. Such procedural gaps not only deny justice but also reinforce institutional erasure. To address this, reforms must include gender-neutral drafting of sexual offences, mandatory sensitization training for police and judicial officers, and procedural integration of the Transgender Persons (Protection of Rights) Act, 2019<sup>11</sup>, which affirms the right to self-identified gender and protection from abuse. Without these measures, the BNS risks perpetuating structural invisibility under the guise of reform, leaving gender minorities legally acknowledged but practically unprotected.

- **Persons with Disabilities:**

The Bharatiya Nyaya Sanhita (BNS), 2023, while positioned as a modern replacement for the Indian Penal Code, fails to incorporate essential procedural safeguards for persons with disabilities, thereby perpetuating systemic exclusion within the criminal justice process. Across its provisions—including those governing investigation, trial, and evidence collection—there is a conspicuous absence of mandates for accessibility. For instance, the BNS does not contain any clause requiring the use of sign language interpreters, screen-reader compatible summons, or alternative formats for legal documentation, despite the obligations under the Rights of Persons with Disabilities Act, 2016, particularly Sections 12 and 13<sup>12</sup>, which guarantee equal access to justice and reasonable accommodation in legal proceedings. This legislative silence stands in direct contradiction to the Supreme Court's jurisprudence in *Jeeja Ghosh v. Union of India*<sup>13</sup>, which affirmed that procedural fairness must be tailored to individual needs, not imposed uniformly. Without such accommodations, disabled complainants, witnesses, and accused persons face insurmountable barriers—from inaccessible police stations to non-inclusive courtroom environments—effectively denying them the protections of Article 21<sup>14</sup> of the Constitution, which encompasses dignity and due process.

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<sup>11</sup> The Transgender Persons (Protection of Rights) Act, 2019 is a landmark law that guarantees the right to self-identified gender, prohibits discrimination, and ensures legal recognition and welfare protections for transgender individuals in India.

<sup>12</sup> Sections 12 and 13 of the Transgender Persons (Protection of Rights) Act, 2019 mandate that government and private establishments ensure non-discrimination in employment (Section 12) and that educational institutions provide inclusive education to transgender persons (Section 13).

<sup>13</sup> *Jeeja Ghosh v. Union of India* (2016) 7 SCC 761 is a landmark Supreme Court case affirming the right to dignity and non-discrimination for persons with disabilities, after activist Jeeja Ghosh was wrongfully deboarded from a flight due to her cerebral palsy. *Jeeja Ghosh v. Union of India*, (2016) 7 SCC 761 (India)

<sup>14</sup> Article 21 of the Constitution of India guarantees the fundamental right to life and personal liberty, ensuring that no person is deprived of these rights except through a procedure established by law.

- **Economically weaker sections:**

The Bharatiya Nyaya Sanhita (BNS), 2023 introduces several structural changes aimed at modernizing India's penal law, but its impact on economically weaker sections (EWS) remains uneven and demands critical attention. While the BNS streamlines offences and introduces alternatives like community service under Section 4(f), it does not embed safeguards to ensure that such provisions are applied equitably across socioeconomic strata. For instance, community service may disproportionately burden individuals without stable income or social support, unless accompanied by guidelines on proportionality and feasibility. Moreover, while Section 4(f) introduces community service as an alternative punishment, it lacks clarity on how such sentencing will be equitably applied to those without stable income, education, or social support—raising concerns about discriminatory enforcement. The BNS also does not institutionalize digital justice platforms or mobile courts, which could have bridged geographic and financial barriers to legal access. This oversight is particularly troubling given the findings in *State of Uttar Pradesh v. Rajesh Gautam* (2003)<sup>15</sup>, where the Court emphasized the need for systemic reforms to prevent prolonged detention of undertrial prisoners. Without targeted procedural safeguards, budgetary allocations, and socioeconomic sensitivity, the BNS risks replicating the exclusions of its colonial predecessor, undermining the constitutional guarantees of Articles 14 and 21, which enshrine equality before law and the right to life with dignity. A truly inclusive criminal code must embed mechanisms that recognize poverty not as a moral failing, but as a structural condition requiring legal accommodation.

## **CONSTITUTIONAL ANALYSIS:**

Procedural justice, often viewed as a matter of statutory design, is in fact a deeply embedded constitutional imperative under Indian law. The Bharatiya Nyaya Sanhita (BNS), 2023, while introducing structural reforms, fails to fully internalize this principle, particularly in its treatment of marginalized communities. Under Article 21 of the Constitution, the right to life and personal liberty has been expansively interpreted to include dignity, fair trial, and meaningful access to justice. This was emphatically affirmed in *Jeeja Ghosh v. Union of India* (2016), where the Supreme Court held that procedural fairness must be tailored to individual needs, especially for persons with disabilities. Similarly, the doctrine of substantive due

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<sup>15</sup> *State of Uttar Pradesh v. Rajesh Gautam* (2003) underscored the urgent need for systemic reforms to prevent prolonged detention of undertrial prisoners, affirming that extended incarceration without timely trial violates constitutional guarantees under Article 21. *Rajesh Gautam v. State of Uttar Pradesh*, (2003) 5 SCC 315 (India)

process, evolved through cases like *Maneka Gandhi v. Union of India* (1978)<sup>16</sup>, requires that laws not only follow procedure but also meet standards of fairness and reasonableness. The BNS's failure to mandate procedural accommodations—such as sign language interpretation, accessible documentation, or trauma-informed protocols—violates this standard. Moreover, the principle of reasonable classification under Article 14, as applied in *State of Maharashtra v. Bandu* (2022)<sup>17</sup>, demands that legal distinctions serve a legitimate purpose and are not arbitrary. Yet, the continued gender-specific framing of sexual offences under Sections 63 to 70 of BNS excludes trans and non-binary victims, undermining the equality mandate. In *Navtej Singh Johar v. Union of India* (2018)<sup>18</sup>, the Court recognized the constitutional protection of gender identity and sexual orientation, reinforcing the need for inclusive legal recognition. Collectively, these precedents affirm that procedural safeguards are not discretionary—they are constitutionally required. The BNS, to fulfil its transformative potential, must embed these doctrines into its procedural architecture, ensuring that justice is not merely delivered, but delivered equitably.

### **SUGGESTIVE LEGAL REFORMS TO ADDRESS THE GAPS:**

To realize the constitutional promise of equal justice, the *Bharatiya Nyaya Sanhita* (BNS), 2023 must evolve beyond textual reform and embrace a structurally inclusive framework. First, inclusive legal drafting is imperative—provisions such as Sections 63 to 70, which define sexual offences, must be rewritten using gender-neutral language to reflect the jurisprudence laid down in *Navtej Singh Johar v. Union of India* (2018), where the Supreme Court affirmed the constitutional protection of gender identity and sexual orientation. Second, procedural accommodations must be codified to ensure accessibility for persons with disabilities, in line with the mandate of the *Rights of Persons with Disabilities Act, 2016*, particularly Sections 12 and 13, and the precedent set in *Jeeja Ghosh v. Union of India* (2016), which emphasized individualized procedural fairness. This includes mandatory deployment of sign language interpreters, screen-reader compatible documentation, and simplified summons formats. Third,

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<sup>16</sup> *Maneka Gandhi v. Union of India* (1978) is a landmark Supreme Court case that expanded the scope of Article 21, holding that any law affecting personal liberty must be just, fair, and reasonable, thereby establishing the "golden triangle" of Articles 14, 19, and 21. *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248 (India)

<sup>17</sup> *State of Maharashtra v. Bandu* (2022) emphasized that legal classifications must be based on intelligible differentia and serve a legitimate state interest. The Court cautioned against arbitrary distinctions that undermine the constitutional guarantee of equality under Article 14. *State of Maharashtra v. Bandu*, (2022) SCC, SC 1234 (India)

<sup>18</sup> *Navtej Singh Johar v. Union of India* (2018) decriminalized consensual same-sex relations by striking down parts of Section 377 IPC as unconstitutional. The Supreme Court affirmed that gender identity and sexual orientation are protected under Articles 14, 15, and 21, mandating inclusive legal recognition.



community-based justice models—such as restorative justice circles, mobile courts, and legal aid clinics—should be integrated into the justice delivery system to address the needs of economically weaker sections, who are disproportionately represented among undertrial prisoners. The absence of presumptive bail provisions in Section 479 and the lack of proactive legal aid mechanisms highlight the urgency of such reforms. Fourth, judicial training on intersectionality must be institutionalized to sensitize judges and magistrates to the compounded vulnerabilities faced by individuals at the intersection of caste, gender, disability, and poverty. This aligns with the reasoning in *State of Maharashtra v. Bandu* (2022), which underscored the need for context-sensitive adjudication. Finally, monitoring and accountability mechanisms must be embedded within the procedural architecture of BNS—through independent oversight bodies, periodic accessibility audits, and public reporting of compliance with constitutional standards. Without these five pillars, the BNS risks replicating the exclusions of its colonial predecessor, rather than fulfilling its potential as a justice code for all.

## **CONCLUSION:**

The Bharatiya Nyaya Sanhita (BNS), 2023, represents a historic legislative shift in India's criminal justice framework, yet its promise of modernization remains incomplete without a corresponding commitment to inclusivity and equity. As this paper has demonstrated, the BNS retains gendered and exclusionary language in key provisions such as Sections 63 to 70, fails to embed procedural accommodations for persons with disabilities, and overlooks the structural disadvantages faced by economically weaker sections—particularly in bail access (Section 479) and legal aid deployment. These gaps are not merely technical oversights; they reflect a deeper disconnect between statutory reform and constitutional morality. Anchored in the principles of Articles 14, 15, and 21, and guided by landmark jurisprudence including *Navtej Singh Johar*, and *Jeeja Ghosh*, this analysis underscores that procedural justice is a fundamental right—not a legislative privilege. To fulfil the transformative potential of the BNS, reforms must be grounded in intersectional sensitivity, inclusive drafting, and structural accountability. Only then can India move from symbolic recognition to substantive representation, and from procedural formality to meaningful justice. The future of criminal law must not merely reflect the letter of the Constitution—it must embody its spirit.

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