
THE BHARTIYA NYAYA SANHITA AND SMART JUSTICE: A PARADIGM SHIFT OR JUST A MAKEOVER

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ABSTRACT

With the historic move aimed at reshaping India's colonial-era criminal justice system, the government has introduced the Bhartiya nyaya Sanhita, claiming it to be a system that is swifter more transparent and rooted in Indian values decolonizing criminal law with integrating the words like 'dharma' and 'nyaya'. Introduces contemporary offences such as mob lynching, terrorism, organised and hate crimes. It also incorporates technology driven aptitude with inclusion of e- FIR's, electronic evidence recognition and mandatory videography during searches. Enhances victim protection through community service as a new mode of punishment for petty offences, provides protection against sexual exploitation under false promise of marriage. Also with the parallel rise of smart justice - a digital, data driven approach to justice delivery - country stands at a CROSSROAD, therefore is this truly a paradigm shift in how justice is conceptualized and delivered or is this merely a cosmetic overhaul. Critics argue that BNS largely modernises rather than overhauls the colonial era system giving rise to unresolved challenges to the judicial system mainly police reforms, judicial delays and corruption. Achieving a true paradigm shift would require broader structural reforms, clearer definitions and systematic implementation for smooth transformative potential.

Introduction

With a modernized victim-centric and culturally aligned framework, the BNS came into effect on July 1, 2024 replacing 163 year old IPC- coming out not only as a legal reform but also a symbolic assertion of India's sovereignty and identity in its Justice system. It decolonizes the legal system, integrates traditional values like dharma and nyaya in addition to usage of "dand" replacing punishment marks a structural, cultural and philosophical shift not just a legal one. It reframes justice not merely as a mechanism of deterrence but as an instrument for societal balance, accountability and restoration— aligning modern legal standards with India's civilisational ethos.

Historical Context: From Colonial Legacy to Indigenous Reform

The Indian Penal Code, conceived under the guidance of Lord Thomas Babington Macaulay enacted in 1860 was among the most comprehensive qualification of criminal law within the British Empire. Strongly influenced by English legal traditions, It sought to create a uniform criminal justice system across British India's vast and diverse regions . While ground breaking for its era, It uniquely reflected the priorities of colonial governance, placing the authority of the state above individual freedom and favouring punitive measures over rehabilitative approaches after independence in 1947. The IPC was retained with only limited amendments over time, However, it became increasingly evident that its structure and philosophy were at odds with the democratic ideals, Constitutional values and social cultural realities of modern India Colonial era framework left ill equipped to address the complexity of contemporary crime from cyber offences and organised criminal networks to economic fraud and terrorism challenges, unimaginable at the time of its drafting. This growing disconnect fuelled calls for a truly indigenous and modern criminal code, one capable of balancing justice with safeguarding individual rights and reflecting India's evolving, legal and societal Identity.

Major reforms under the Bhartiya Nyaya Sanhita

Archaic provisions like sedition have been repealed and replaced with more precise offence of treason under section 147-152, targeting acts that "wage war against the Government of India" rather than merely excite disaffection. ^[1]

For the first time, terrorism, defined comprehensively in Section 113 to include threats to

India's unity, sovereignty, security and economic stability.^[1]

Organised crime (criminalised under section 111 and petty organised crimes under section 112) covering kidnapping, cybercrime, extortion and contract killing.^[1]

Mob lynching addressed in section 103(2) and hate crimes have been explicitly defined and criminalised. Emphasises on technology integration with recognition of electronic evidences, mandating videography of search and seizures and supporting e FIR's (section 105, 173, 176, 180, 185 and 497).^[1]

Introduction of 'community service' as a new mode of punishment for minor offences (a practice long established in countries like the UK, Canada and Australia), protection against sexual exploitation (section 69) under false promises of marriage marks a clear shift from colonial laws to a more accountable and contemporary justice system.^[1]

Indigenous and tribal population, who have historically faced barriers to efficient justice delivery, the BNS reflects a conscious effort by recognising the role of community based dispute resolution. Through this the BNS tends to align with the constitutional mandate under Article 224 and 275 that provides for the protection and advancement of scheduled tribes and complements the Panchayats (extension to scheduled areas) Act, 1996– [PESA].^[2]

By blending technology, empathy and cultural inclusivity, BNS transforms India's legal system into a faster, fairer and more accessible framework for justice. It represents smart justice by modernising laws to tackle cybercrimes, prioritising victim protection, rehabilitation rather than just punishment and empowering local communities through indigenous dispute resolution.

Redefining India's criminal justice image on the global stage

The Bhartiya Nyaya Sanhita has contributed to reshaping the global perception of India's criminal justice system, portraying it as more modern, efficient and rooted in its own socio-cultural values with laws tailored to present day realities, such as stronger safeguard for women and children, provisions to tackle cyber crime and inclusion of community service, it reflects a deliberate move towards colonising the legal framework while aligning with international norms of Justice. With its focus on technology enabled procedures and time bound investigations India resolve to enhanced transparency, efficiency and accountability in justice

delivery. These reforms convey to the World that India is committed to a progressive, rights-conscious and culturally grounded legal system that can meet the demands of 21st century.

Smart Justice and the Digital Shift

Smart justice refers to a modern approach to justice delivery that leverages technology, data analytics and process innovations to make the legal system faster, more transparent and more accessible to all stakeholders. In the Indian scenario, this concept has been steadily gaining traction through several landmark initiatives. The e-courts Mission Mode Project has sought to digitise court records and case management, while virtual hearings have enabled proceedings to continue even in situations where physical appearances are difficult as seen during COVID-19 pandemic. Online portals for case tracking empowers lawyers to monitor progress without procedural bottlenecks, while AI driven legal research platforms enhance the efficiency and accuracy of the legal drafting and argument preparation. Further, blockchain-based evidence management systems, promise secure, tamper-proof, storage of crucial documents and records.

Paradigm shift or cosmetic overhaul?

Although the Bhartiya Nyaya Sanhita introduces both symbolic and substantive changes to the Indian penal code, many legal scholars, practitioners and members of civil Society remain sceptical about whether it truly represents a paradigm shift as it mainly modernises and repackages the existing framework underlying architecture without overhauling the justice system's core structures. The legislation was passed with limited parliamentary debate, raising concerns about the adequacy of stakeholder consultation and democratic scrutiny. Additionally, it leaves untouched systematic deeper challenges like judicial delays, corruption and police reforms. In the absence of robust institutional structuring, streamlined procedures and comprehensive capacity building measures, the BNS's transformative potential remains limited prompting some to regard it as a modest, legal facelift rather than the profound systematic reform it aspires to be. The Bhartiya Naya Sanhita actively compliments and strengthens this technological transformation by incorporating statutory provisions that are inherently 'tech-ready'. It formally recognises the admissibility of digital evidence and courts provides for remote documentation to reduce delays and mandates video graphic recording of certain investigative processes to enhance transparency and procedural abuse by doing so it not only integrate legal reform with technological advancement, but also positions

the Indian justice system to meet the demands of a digital era, ensuring that justice is not just delivered but delivered efficiently credibly and in step with global Best practices?

Recommendations for a true Paradigm shift

The BNS needed clearer statutory definitions to remove overlaps between provisions, particularly in areas such as terrorism, organised crime and threats to national security. Also, considering the exponential rise in cases involving digital fraud, data theft and harassment it also required a dedicated cybercrime chapter. A specific victim-rights chapter enshrining legal aid, psychological support, protection from secondary victimisation would have strengthened the victim centric vision of BNS. On the procedural forefront, BNS lacks a fully integrated fast track and e-court mechanism that does not complete the essence of technology driven justice. Such changes, paired with a nationwide, standardised framework for probation and community service—supported by robust monitoring systems and structural rehabilitation programs is crucial to maintain uniformity across states and eliminate disparities in sentencing outcomes, would have transformed the code from a colonial relic into a genuinely modern and efficiency-driven criminal justice framework.

Conclusion

In sum, the Bhartiya Nyaya Sanhita marks a noteworthy attempt to break away from colonial-era legal framework by introducing modern offences, strengthening protection for vulnerable groups and integrating technology into justice process. It aspires to align the criminal justice system with contemporary social realities and the vision of a more efficient transparent and reformative legal order. However, its claim to being a true paradigm shift is far from settled. Laws, no matter how progressive on paper derive their transformative power from the institutions that enforce them, the procedures that operationalise them, and the resources allocated for their implementation. Without simultaneous investment in judicial infrastructure, Police training, procedural streamlining and digital capacity building, the BNS risks becoming an ambitious, yet superficial legal facelift —more symbolic than substantive. The decisive factor will be the commitment of policy makers, law, enforcement, and the judiciary to ensure that these reforms are not only enacted but also embedded into the daily functioning of the judicial system, thereby delivering tangible and lasting change.

Endnotes

[1] Bharatiya Nyaya Sanhita, No. 45 of 2023 (India), enacted Dec. 21, 2023; commenced July 1, 2024.

[2] Panchayats (Extension to Scheduled Areas) Act, No. 40 of 1996 (India); Constitution of India Articles 224 and 275.