
BHARATIYA NYAYA SANHITA, 2023 AND CYBER OFFENCES: A COMPARATIVE STUDY WITH THE OLD IPC PROVISIONS

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ABSTRACT

The Bharatiya Nyaya Sanhita, 2023 (BNS) replaced the Indian Penal Code, 1860 (IPC) with effect from 1 July 2024, marking the most significant overhaul of India's substantive criminal law since independence.¹ While the BNS retains much of the architecture of the IPC, it introduces express recognition of "electronic records" within offences that were, until now, interpreted extensively through judicial gloss and the Information Technology Act, 2000 (IT Act).² This paper undertakes a comparative doctrinal study of cyber-related property offences under the BNS principally cheating (Section 318), cheating by personation (Section 319) and forgery, including forgery of electronic records (Section 336) against their IPC predecessors (Sections 415–420 and 463–471). It examines whether the BNS merely re-numbers existing law or effects substantive change, situates the provisions within the broader matrix of the IT Act, and evaluates the adequacy of the new framework in addressing contemporary cyber-fraud, identity theft, phishing and deepfake-based impersonation. The paper concludes that while the BNS represents a welcome consolidation and modest strengthening of penal consequences, it stops short of a purpose-built cyber-crime code and continues to rely on the IT Act as the primary special legislation.

Keywords: Bharatiya Nyaya Sanhita 2023, Indian Penal Code, cyber offences, electronic forgery, cheating by personation, Information Technology Act 2000, comparative criminal law.

¹Bharatiya Nyaya Sanhita 2023, s 1(2) (came into force 1 July 2024, vide Notification SO 1478(E)).

²Information Technology Act 2000, as amended by the Information Technology (Amendment) Act 2008.

I. Introduction

Cybercrime in India has, for over two decades, been prosecuted through an uneasy alliance of two statutes never designed to operate together: the IPC, drafted in 1860 for an agrarian, paper-based society, and the IT Act, enacted in 2000 to regulate electronic commerce and later amended in 2008 to create substantive cyber-offences.³ Courts filled the interstitial gaps by reading "document" in the IPC to include electronic records, a reading that Parliament itself endorsed through the General Clauses Act amendments accompanying the IT Act.⁴ The enactment of the BNS, alongside the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) and the Bharatiya Sakshya Adhiniyam, 2023 (BSA), was an opportunity to rationalise this fragmented framework.⁵ This paper asks a narrow but important question: to what extent does the BNS actually modernise the two offences most frequently invoked in cyber-fraud prosecutions – cheating by personation and forgery – and how does the resulting law compare with its IPC ancestry?

The study proceeds in four parts. Part II traces the legislative history and the stated rationale for replacing the IPC. Part III sets out the IPC provisions on cheating, cheating by personation and forgery, alongside their treatment in leading cyber-fraud judgments. Part IV undertakes a section-by-section comparison with the corresponding BNS provisions. Part V offers a critical evaluation, before the paper concludes with observations on the continuing centrality of the IT Act.

II. From IPC to BNS: Legislative Background

The Union Home Minister, while introducing the three criminal law bills in the Lok Sabha in August 2023, stated that the object was to replace colonial, punishment-oriented legislation with a justice-oriented code reflecting Indian conditions and technological realities.⁶ The Bharatiya Nyaya Sanhita Bill, 2023 was referred to the Standing Committee on Home Affairs, which recommended several drafting corrections, following which a revised Bill was passed and received presidential assent on 25 December 2023.⁷ The BNS came into force on 1 July

³Pavan Duggal, *Cyber Law: The Indian Perspective* (5th edn, Universal Law Publishing 2021) 45–52.

⁴General Clauses Act 1897, s 3(18); Information Technology Act 2000, sch I, amending the Indian Penal Code 1860 to insert 'electronic record' after 'document'.

⁵Ministry of Home Affairs, *Statement of Objects and Reasons, Bharatiya Nyaya Sanhita Bill 2023* (Lok Sabha, 11 August 2023).

⁶Lok Sabha Secretariat, *Debates on the Bharatiya Nyaya Sanhita Bill 2023* (11 August 2023) vol XVIII.

⁷Standing Committee on Home Affairs, *146th Report on the Bharatiya Nyaya Sanhita Bill 2023* (Rajya Sabha

2024, repealing the IPC in its entirety.⁸

The Statement of Objects and Reasons accompanying the Bill identifies the need to address offences that "have taken new shapes owing to the advent of technology," citing organised crime, terrorism and offences facilitated by electronic means as illustrative examples.⁹ Notably, the BNS introduces, for the first time in a general penal code, defined offences of "organised crime" (Section 111) and "terrorist act" (Section 113), both of which expressly contemplate the use of computer resources.¹⁰ However, outside these headline additions, the BNS's treatment of property offences including forgery and cheating largely reproduces the IPC's substance while renumbering sections and consolidating overlapping provisions.¹¹

III. Cyber Offences under the IPC: The Pre-BNS Position

A. Cheating and Cheating by Personation

Section 415 of the IPC defined "cheating" as the fraudulent or dishonest inducement of a person to deliver property or to do or omit to do an act causing damage or harm.¹² Section 416 defined the aggravated species of "cheating by personation" – deceiving another by pretending to be some other person, real or imaginary – with punishment prescribed separately under Section 419 (imprisonment up to three years, or fine, or both).¹³ Courts consistently held that impersonation carried out through electronic means, such as the creation of fake social media profiles or fraudulent emails purporting to be from a bank, fell squarely within Section 416, "person" not being confined to physical presence.¹⁴ In *State of NCT of Delhi v Navjot Sandhu* the Supreme Court confirmed a broad, technology-neutral construction of penal terms drafted in the nineteenth century, an interpretive method later relied upon in numerous phishing and SIM-swap prosecutions.¹⁵

Secretariat, November 2023).

⁸Bharatiya Nyaya Sanhita 2023, s 358 (repeal and savings clause).

⁹Statement of Objects and Reasons (n 5) para 4.

¹⁰Bharatiya Nyaya Sanhita 2023, ss 111, 113.

¹¹Uttar Pradesh Police, *Comparative Table: IPC 1860 and BNS 2023* (Government of Uttar Pradesh, 2024).

¹²Indian Penal Code 1860, s 415.

¹³*ibid* ss 416, 419.

¹⁴*Iridium India Telecom Ltd v Motorola Inc* (2011) 1 SCC 74; see also KN Chandrasekharan Pillai, *Ratanlal & Dhirajlal's The Indian Penal Code* (36th edn, LexisNexis 2019) 812–815.

¹⁵*State (NCT of Delhi) v Navjot Sandhu* (2005) 11 SCC 600.

B. Forgery

Sections 463 to 477A of the IPC dealt with forgery in its various forms. Section 463 defined "forgery" as the making of a false document with intent to cause damage, to support a claim, to induce a person to part with property, or to commit fraud.¹⁶ Section 464 elaborated when a document is said to be "false," while Section 465 prescribed the base punishment (imprisonment up to two years, or fine, or both).¹⁷ Aggravated forms attracted higher punishment: forgery for the purpose of cheating (Section 468 up to seven years) and forgery intended to harm reputation (Section 469 up to three years).¹⁸ Crucially, the words "electronic record" were inserted into Sections 463, 464, 468 and 469 by the Information Technology (Amendment) Act, 2008, bringing digital document fraud falsified emails, forged digital signatures, tampered PDFs expressly within the ambit of forgery offences.¹⁹ Section 471 separately punished the fraudulent use of a forged document or electronic record as genuine.²⁰

C. The IT Act Overlay

Parallel to these IPC provisions, the IT Act, 2000 created a bespoke regime for computer-related offences. Section 43 imposed civil liability for unauthorised access, data theft and the introduction of malware; Section 66 criminalised the same conduct where done dishonestly or fraudulently.²¹ Section 66C specifically punished "identity theft" the fraudulent or dishonest use of another's electronic signature, password or unique identification feature while Section 66D punished "cheating by personation by using computer resource."²² The near-verbatim overlap between IPC Section 416/419 and IT Act Section 66D generated persistent debate over which statute should govern prosecution, with courts generally permitting cumulative charges since the offences, though overlapping, were not identical in ingredients.²³ The Supreme Court's decision in *Sharat Babu Digumarti v Government of NCT of Delhi*, while concerned with Section 292 IPC and Section 67 of the IT Act, established the interpretive principle that a special law's specific provision ordinarily prevails over a general provision addressing the same

¹⁶Indian Penal Code 1860, s 463.

¹⁷ibid ss 464, 465.

¹⁸ibid ss 468, 469.

¹⁹Information Technology (Amendment) Act 2008, s 51, sch amending Indian Penal Code 1860, ss 463, 464, 468 and 469 to insert 'electronic record'.

²⁰Indian Penal Code 1860, s 471.

²¹Information Technology Act 2000, ss 43, 66.

²²ibid ss 66C, 66D.

²³*Gagan Harsh Sharma v State of Maharashtra* 2018 SCC OnLine Bom 20638; Talwant Singh, 'Cyber Law and Information Technology' (2019) 2 Delhi Judicial Academy Journal 1, 14–18.

subject-matter, a principle of continuing relevance to the IPC/BNS–IT Act relationship.²⁴

IV. The BNS Provisions: Continuity and Change

A. Cheating Sections 318 and 319, BNS

Chapter XVII of the BNS, "Of Offences Against Property," restates cheating in Section 318, consolidating the former Sections 415, 417, 418 and 420 of the IPC into a single, better-organised provision with graded sub-sections.²⁵ Section 318(1) reproduces the Section 415 definition; Section 318(2) prescribes the base punishment (up to one year or fine or both, mirroring old Section 417); Section 318(3) addresses aggravated cheating involving dishonest inducement to deliver property (up to three years, mirroring Section 420); and Section 318(4) creates an enhanced punishment (up to five years) where the offender, by virtue of a relationship of trust, occupies a fiduciary position a refinement without a direct IPC equivalent, aimed at cheating committed in professional or custodial relationships, a category increasingly relevant to online investment frauds.²⁶

Section 319 reproduces Section 416 verbatim for the definition of cheating by personation, but consolidates the erstwhile Sections 416 and 419 into a single section: sub-section (1) defines the offence, sub-section (2) prescribes punishment.²⁷ The maximum term of imprisonment has been increased from three years (Section 419, IPC) to five years (Section 319(2), BNS), while the option of fine alone remains available.²⁸ The offence remains triable by a Magistrate; the illustrations retained from the IPC impersonating a real banker, or a deceased person are preserved unchanged in the Bare Act, confirming that Parliament envisaged no substantive alteration to the scope of "personation," including its extension to online impersonation.²⁹

B. Forgery Sections 335 and 336, BNS

Chapter XVIII of the BNS, "Of Offences Relating to Documents and to Property Marks," relocates the definition of a "false document or electronic record" (formerly Section 464, IPC) to Section 335, retaining the existing language, including the electronic-record insertions made

²⁴*Sharat Babu Digumarti v Government (NCT of Delhi)* (2017) 2 SCC 18.

²⁵Bharatiya Nyaya Sanhita 2023, s 318.

²⁶*ibid* s 318(4); Legal Bites, 'Cheating under the Bharatiya Nyaya Sanhita, 2023: A Comprehensive Legal Analysis' (*Legal Bites*, 23 April 2025).

²⁷Bharatiya Nyaya Sanhita 2023, s 319(1)–(2).

²⁸*ibid* s 319(2), cf Indian Penal Code 1860, s 419.

²⁹Bharatiya Nyaya Sanhita 2023, s 319, Illustrations (a)–(b).

by the 2008 IT Act amendment.³⁰ Section 336 then consolidates what were previously four separate IPC provisions Section 463 (definition of forgery), Section 465 (general punishment), Section 468 (forgery for the purpose of cheating) and Section 469 (forgery to harm reputation) into a single section with four numbered sub-sections.³¹ Section 336(1) defines forgery in terms identical to the old Section 463, expressly retaining "false electronic record" within its scope.³² Section 336(2) prescribes the base punishment (imprisonment up to two years, or fine, or both), unchanged from Section 465.³³ Section 336(3) addresses forgery for the purpose of cheating, retaining the seven-year maximum sentence found in Section 468, and Section 336(4) addresses forgery intended to harm reputation, retaining the three-year maximum found in Section 469.³⁴

Sections 337 to 340 of the BNS mirror, with largely cosmetic renumbering, the former Sections 466 (forgery of court records or public registers now expanded to expressly include Government-issued identity documents such as voter identity cards), 467 (forgery of valuable security or will), 474 (possession of a forged document with intent to use it as genuine) and 470–471 (forged document or electronic record, and its fraudulent use) of the IPC.³⁵ The expansion of Section 337 (formerly Section 466) to cover forged identity documents is a direct legislative response to the proliferation of fake Aadhaar, PAN and voter-identity documents used to open fraudulent bank accounts and SIM cards for cyber-fraud syndicates.³⁶

C. A Consolidated Comparative Table

Subject-Matter	IPC, 1860	BNS, 2023	Change
Definition of cheating	s 415	s 318(1)	No substantive change
Punishment for cheating	ss 417, 420	s 318(2)–(3)	Consolidated
Cheating in fiduciary relationship		s 318(4)	New provision
Cheating by personation (definition)	s 416	s 319(1)	No substantive change
Cheating by personation (punishment)	s 419 (max 3 yrs)	s 319(2) (max 5 yrs)	Enhanced punishment
False document/electronic record	s 464	s 335	Renumbered only

³⁰ibid s 335, cf Indian Penal Code 1860, s 464 (as amended in 2008).

³¹ibid s 336(1)–(4).

³²ibid s 336(1), cf Indian Penal Code 1860, s 463.

³³Bharatiya Nyaya Sanhita 2023, s 336(2), cf Indian Penal Code 1860, s 465.

³⁴Bharatiya Nyaya Sanhita 2023, s 336(3)–(4), cf Indian Penal Code 1860, ss 468–469.

³⁵ibid ss 337–340, cf Indian Penal Code 1860, ss 466–467, 470–471, 474.

³⁶PRS Legislative Research, *Legislative Brief: The Bharatiya Nyaya Sanhita Bill 2023* (PRS India, September 2023) 9.

(definition)			
Forgery (definition)	s 463	s 336(1)	No substantive change
Punishment for forgery	s 465	s 336(2)	No substantive change
Forgery for cheating	s 468	s 336(3)	Consolidated, unchanged quantum
Forgery to harm reputation	s 469	s 336(4)	Consolidated, unchanged quantum
Forgery of court/public records/identity documents	s 466	s 337	Scope expanded to identity documents
Forgery of valuable security, will	s 467	s 338	Renumbered only
Possession of forged document	s 474	s 339	Renumbered only
Forged document/electronic record; use as genuine	ss 470–471	s 340(1)–(2)	Renumbered and consolidated

V. Critical Analysis

A. Consolidation Without Reconceptualisation

The comparative exercise above demonstrates that the BNS's principal innovation, in respect of these cyber-adjacent offences, is structural rather than substantive: multiple IPC sections addressing a single conceptual offence (forgery, in particular) have been folded into a single section with sub-clauses.³⁷ This consolidation aids readability and reduces the risk of technical acquittals arising from mischarging under the "wrong" of several overlapping IPC sections a recurring difficulty in forgery prosecutions.³⁸ However, the underlying tests for what constitutes a "false electronic record," the mental element required, and the categories of intent that aggravate the offence remain unchanged from the law as it stood after the 2008 amendments. The BNS therefore does not represent a genuine re-imagination of forgery for the digital age; it inherits and repackages the IT Act's 2008 insertions.

B. The Enhanced Punishment for Cheating by Personation

The increase in maximum punishment for cheating by personation from three to five years is the most concrete substantive change identified in this study.³⁹ Given that online impersonation fake customer-care numbers, cloned social media profiles, spoofed caller IDs and, increasingly,

³⁷Lexology, 'The Bharatiya Nyaya Sanhita, 2023: Analyzing the Successor to the Indian Penal Code, 1860' (*Lexology*, 2 January 2024).

³⁸Ratanlal & Dhirajlal (n 14) 1102–1105.

³⁹Bharatiya Nyaya Sanhita 2023, s 319(2).

AI-generated "deepfake" voice and video impersonation used in phishing frauds has grown sharply, the enhancement can be read as a proportionate legislative response.⁴⁰ Yet the provision continues to require proof that the accused "pretended to be some other person" or "represented" a false identity, a test developed for pre-digital modes of deception. Commentators have questioned whether this framing adequately captures synthetic (AI-generated) impersonation, where no "pretence" by a natural person occurs at the moment of the fraudulent representation, the deception being executed by an algorithm on the perpetrator's instruction; the BNS offers no interpretive clarification on this point, leaving it, as before, to judicial extension by analogy.⁴¹

C. Continuing Dependence on the IT Act

Perhaps the most significant conclusion of this study is that the BNS does not disturb, still less absorb, the specialised cyber-offence regime under the IT Act. Sections 43, 66, 66C and 66D of the IT Act continue to operate in parallel with BNS Sections 318, 319 and 336, replicating the overlap problem that existed between the IPC and the IT Act.⁴² The BNS's Statement of Objects and Reasons acknowledges the growing role of technology in crime but does not attempt the kind of integration that would, for instance, place "identity theft" and "cheating by personation using computer resource" within a single, unified provision.⁴³ Prosecutors will therefore continue to invoke both the BNS and the IT Act cumulatively, as they earlier did with the IPC, relying on the established principle that mere overlap between a general penal provision and a specific one does not bar simultaneous prosecution unless the special statute contains an express or necessarily implied bar.⁴⁴

D. The Absence of a Digital-Native Definition of "Document"

The BNS, like the IPC before it, defines "electronic record" by cross-reference to the Information Technology Act rather than furnishing an autonomous, updated definition responsive to emerging technologies such as blockchain-based records, non-fungible tokens or

⁴⁰Nandan Kamath, *Law Relating to Computers, Internet and E-Commerce* (5th edn, Universal Law Publishing 2020) 221–230.

⁴¹NASSCOM–DSCI, *Data Security Council of India: Deepfake and Synthetic Media Threat Report 2025* (DSCI, 2025) 18–22.

⁴²Information Technology Act 2000, ss 43, 66, 66C, 66D.

⁴³Statement of Objects and Reasons (n 5) para 6.

⁴⁴*Sharat Babu Digumarti* (n 24) [22]–[24].

AI-generated synthetic media.⁴⁵ This drafting choice preserves interpretive continuity a benefit, given the substantial body of case law interpreting "electronic record" under the IPC but also means that any future technological development not anticipated by the IT Act's 2000/2008 definitions will again require either judicial extension or fresh legislative amendment, precisely the difficulty the BNS was, in principle, an opportunity to resolve.⁴⁶

E. Sentencing Rationalisation and Fiduciary Cheating

The introduction of Section 318(4), penalising cheating committed by a person in a position of trust with enhanced punishment, is a welcome and cyber-relevant addition. Much of contemporary online financial fraud fraudulent investment platforms, fake trading applications, and "pig-butcher" romance-investment scams is perpetrated by persons who cultivate a relationship of trust with the victim before inducing the fraudulent transfer of funds.⁴⁷ By creating a distinct, more severely punished category for such conduct, the BNS provides prosecutors with a sentencing tool better calibrated to the gravity of trust-based digital fraud than the undifferentiated three-year maximum previously available under Section 420 of the IPC alone.

VI. Conclusion and Recommendations

This comparative study demonstrates that the Bharatiya Nyaya Sanhita, 2023, in respect of cyber-related offences of cheating by personation and forgery, is best characterised as an exercise in consolidation and moderate sentence enhancement rather than substantive reform. The definitions of cheating, cheating by personation and forgery are carried forward from the IPC with only minor drafting refinements; the principal changes of substance are (i) the increase in maximum punishment for cheating by personation from three to five years, (ii) the creation of an aggravated category of cheating committed in a fiduciary relationship, and (iii) the expansion of the forgery-of-public-records provision to expressly cover forged Government-issued identity documents. Beyond these, Sections 335–340 of the BNS reproduce, section for section, the substance of IPC Sections 463–474, including the 2008 electronic-record insertions.

⁴⁵Information Technology Act 2000, s 2(1)(t) (definition of 'electronic record').

⁴⁶Vakul Sharma, *Information Technology: Law and Practice* (6th edn, LexisNexis 2021) 301–309.

⁴⁷Reserve Bank of India, *Report on Trends and Progress of Banking in India 2024–25* (RBI, 2025) ch 7 (digital fraud typologies).

The persistence of the IT Act as the primary source of cyber-specific offences – identity theft under Section 66C and cheating by personation using a computer resource under Section 66D – means that the fragmentation the BNS had an opportunity to resolve remains unaddressed. It is recommended that any future amendment to the BNS, or a dedicated cyber-crime schedule appended to it, expressly harmonise the overlapping ingredients of BNS Sections 318–319 and 336 with IT Act Sections 66, 66C and 66D, and that the definition of "electronic record" be updated to accommodate emerging categories of synthetic and AI-generated content. Until such reform occurs, practitioners must continue to navigate the dual-track regime inherited, largely unchanged, from the IPC era.

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