
DECOLONIZING INDIA'S PENAL PHILOSOPHY: FROM DAND TO NYAYA - REFORM OR REPACKAGED IPC?

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ABSTRACT

India's criminal justice system has historically been governed by the Indian Penal Code, 1860 (IPC), a colonial legislation designed primarily to maintain imperial control rather than to deliver substantive justice. From "Dand (Punishment) to Nyaya (Justice)" reflects India's move from the colonial Indian Penal Code (IPC) to the Bharatiya Nyaya Sanhita (BNS), aiming to decolonize criminal law by replacing British-era provisions with an indigenous, constitutional approach, though debates persist on whether the BNS truly sheds colonial baggage or reinforces state power with broader definitions and increased penalties for new offenses, introducing concepts like community service while facing scrutiny for continuity in colonial-era punitive ideas. This encapsulates the legislative ambition to transform India's penal philosophy, moving from Britain's control-focused IPC to a purportedly people-centric Indian framework, a transition marked by significant changes but also ongoing critical debate about its success in shedding colonial legacies. This paper examines the conceptual transition "from Dand to Nyaya" by analysing the philosophical foundations of colonial penal law and contrasting them with traditional Indian notions of justice that emphasized proportionality, moral responsibility, social harmony, and victim restoration. Drawing from ancient Indian jurisprudence, including principles reflected in texts such as the Arthashastra, the study situates Nyaya as a holistic concept extending beyond punishment to fairness, equity, and societal balance. The work also argues that decolonization of penal law was necessary not merely to replace colonial terminology, but to address contemporary realities such as evolving forms of crime, victim marginalization, judicial delays, and the demand for a more participatory and reformatory justice system. The replacement of the term "Penal Code" with "Nyaya Sanhita" itself reflects an intention to move away from a punishment-oriented framework toward justice-oriented governance. However, this paper critically evaluates whether these changes constitute substantive reform or merely a repackaging of the IPC? Under a decolonized vocabulary. While the BNS introduces notable reforms, several provisions retain the underlying punitive structure of the IPC, particularly in relation to offences against the State and extensive discretionary powers vested in enforcement agencies. Thus, the paper concludes that the BNS represents a

significant symbolic and structural step towards decolonization, but its success as a genuine reform depends on progressive judicial interpretation, effective implementation, and a sustained commitment to the principles of Nyaya in practice.

Keywords: Decolonization, Penal Philosophy, Dand, Nyaya, Criminal Law Reform, Colonial Legacy.

Background of the Study

India's legal and penal philosophy has evolved through multiple historical phases, shaped by indigenous traditions, colonial interventions, and post-independence legal continuities. In ancient Indian thought, punishment (Dand) was not merely a tool of coercion but was deeply connected with ethical governance, social harmony, and moral responsibility. Classical texts such as the Dharmashastras and Arthashastra viewed punishment as a necessary mechanism to maintain Dharma and ensure justice (Nyaya), where the ruler was morally accountable for fair administration.

However, the advent of British colonial rule introduced a fundamentally different legal paradigm. Colonial criminal law, particularly the Indian Penal Code of 1860, was designed primarily to maintain imperial control, discipline the population, and secure administrative efficiency rather than to reflect indigenous philosophical traditions. This shift marked a transformation from a justice-oriented framework to a punishment-centric and state-controlled legal order. Indigenous dispute resolution mechanisms and community-based justice practices were marginalized or delegitimized during this period.

After independence, India retained much of the colonial criminal justice structure, resulting in a legal system that often emphasizes deterrence and retribution over reformatory and restorative justice. Recent legal reforms, including the introduction of the Bharatiya Nyaya Sanhita, claim to symbolize a departure from colonial legal legacies and a return to indigenous justice-oriented principles. This transition raises critical questions about whether contemporary reforms represent substantive philosophical decolonization or merely symbolic changes.

Research Methodology

This study adopts a **doctrinal (library-based) research methodology**, which focuses on the analysis and interpretation of existing legal doctrines, statutes, case laws, philosophical texts,

and scholarly writings. The research is primarily qualitative and theoretical in nature, aiming to critically examine the evolution and transformation of India's penal philosophy from indigenous traditions to colonial and post-colonial frameworks.

REVIEW OF LITERATURE

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- "The introduction of the Indian Penal Code (IPC, 1860)" marked a significant shift in India's penal philosophy. Studies by S. Bose (2005) and Rajeev Dhavan (2008) have demonstrated that the IPC reflected **British colonial priorities**, emphasizing deterrence, retribution, and administrative control rather than moral or social justice.
- Chaturvedi, N. (2017). *Restorative Justice and Indian Penal Philosophy*. Journal of Indian Legal Studies, 12(2), 45–67.

RESEARCH QUESTIONS

- 1.How did the concept of Dand function as a system of punishment and governance in ancient Indian jurisprudence?
- 2.How does the concept of Nyaya function as a framework for justice-oriented governance in Indian legal and political philosophy?
- 3.How does the replacement of the term "Penal Code" with "Nyaya Sanhita" reflect India's shift from a punishment-oriented criminal justice framework to justice-oriented governance?
4. Do the Bharatiya Nyaya Sanhita Changes Constitute Substantive Reform or Mere Repackaging of the IPC?

HYPOTHESIS:

- The Bharatiya Nyaya Sanhita represents an effort to decolonize India's criminal law by

replacing colonial legal concepts and language with indigenous and constitutional principles.

- Despite reforms, the Bharatiya Nyaya Sanhita retains many core structures and punishments of the Indian Penal Code, reflecting continuity with colonial legal frameworks.
- The transformation of India's penal laws reflects a broader change in governance philosophy, emphasizing justice, rehabilitation, and social welfare over mere deterrence and retribution.

CHAPTER 1

INTRODUCTION

India's legal and penal traditions have undergone profound transformations across historical epochs, shaped by indigenous philosophical thought, colonial interventions, and post-independence legal continuities. The concepts of Dand (punishment) and Nyaya (justice) represent two foundational pillars of Indian jurisprudential thought, reflecting the ethical, political, and social dimensions of governance. While Dand symbolized authority, discipline, and the enforcement of law, Nyaya embodied fairness, equity, and moral justice. The transition from Dand to Nyaya as guiding principles of criminal law offers a critical lens to examine the evolution and decolonization of India's penal philosophy.

In ancient Indian jurisprudence, Dand was not merely a punitive tool but an essential instrument of governance. Classical texts such as the Dharmashastras and Kautilya's Arthashastra emphasized that the ruler's primary duty was to administer Dand justly to maintain Dharma (social and cosmic order). Punishment was integrated with morality, governance, and social responsibility, and the ruler was morally accountable for ensuring justice. At the same time, the broader concept of Nyaya signified justice in its moral, social, and philosophical sense, going beyond legal formalism to encompass equity, righteousness, and social harmony. Thus, pre-colonial Indian legal thought reflected a holistic integration of law, morality, and governance. However, the advent of British colonial rule disrupted indigenous legal traditions and introduced a fundamentally different penal paradigm. Colonial criminal law, exemplified by the Indian Penal Code of 1860, was designed primarily to consolidate imperial authority,

discipline the population, and ensure administrative control.

The colonial penal system prioritized deterrence and retribution, emphasizing centralized state power over community-based justice and moral accountability. Indigenous justice mechanisms and philosophical foundations were marginalized, resulting in the displacement of Nyaya-oriented traditions by a rigid, codified, and punitive legal framework. Following independence, India inherited much of this colonial legal architecture. Despite the adoption of a transformative Constitution committed to justice, equality, and human dignity, the criminal justice system has largely retained colonial structures, procedures, and philosophies. The persistence of punitive approaches, adversarial procedures, and institutional hierarchies reflects the enduring influence of colonial penal thought. This continuity has contributed to systemic challenges such as overcrowded prisons, delays in justice delivery, and disproportionate criminalization of marginalized communities. Consequently, the gap between punishment and justice remains a central concern in contemporary Indian jurisprudence. The discourse on decolonizing India's penal philosophy seeks to address these historical and structural continuities by re-evaluating the philosophical foundations of punishment and justice¹. Decolonization in this context is not merely a symbolic rejection of colonial terminology or legal codes but a substantive rethinking of the purposes, methods, and moral underpinnings of criminal law. It involves reclaiming indigenous concepts such as Nyaya, integrating constitutional values and human rights principles, and embracing reformative and restorative approaches that prioritize rehabilitation, victim participation, and social harmony.

Legally, decolonizing India's penal philosophy means **moving away from laws drafted to govern a colony**. The **Indian Penal Code (IPC), 1860**, was created by the British to maintain order and suppress dissent, not to reflect Indian moral or constitutional values. Its emphasis was on **punishment, deterrence, and state authority**. Decolonization in law involves:

- Replacing colonial statutes with **indigenous and constitutionally grounded laws** (e.g., Bharatiya Nyaya Sanhita replacing IPC).
- Removing archaic colonial concepts such as sedition, colonial terminology, and administrative control mechanisms.

¹ <https://knowlaw.in/2024/10/22/justice-to-nyaya-ditching-the-colonial-legacies-of-criminal-jurisprudence>

- Incorporating **human rights, equality, and dignity** as core legal principles.

Recent legal reforms, including the introduction of new criminal codes such as the Bharatiya Nyaya Sanhita, reflect both symbolic and practical efforts to move away from colonial legal frameworks. These reforms raise critical questions about whether India is witnessing a genuine philosophical shift from punitive colonial models to justice-oriented indigenous traditions or whether the changes remain largely formalistic. Examining this transition requires an interdisciplinary approach that combines legal history, philosophy, and post-colonial theory.

This study, therefore, explores the conceptual and historical journey from Dand to Nyaya, analyzing how punishment and justice have been understood, transformed, and contested in Indian legal thought. Ultimately, the transition from Dand to Nyaya symbolizes the aspiration to transform punishment from an instrument of domination into a framework for justice, equity, and social transformation in a democratic and post-colonial society.

CHAPTER 2

The Concept of Dand in Ancient Indian Jurisprudence: Punishment and Theories of Punishment

How did the concept of Dand function as a system of punishment and governance in ancient Indian jurisprudence?

In ancient Indian jurisprudence, the concept of Dand (punishment) played a central role not only in criminal justice but also in governance, social order, and moral regulation. Dand was not merely a coercive tool of the state; it was a philosophical and ethical principle that connected law, morality, and political authority. Classical Indian legal and political texts such as the Dharmashastras and Kautilya's Arthashastra provide detailed insights into how Dand functioned as an instrument of governance.

The term Dand literally means "rod" or "punishment," symbolizing authority and discipline. In ancient Indian thought, Dand was viewed as a necessary force to maintain Dharma (cosmic and social order). It was believed that without punishment, society would descend into chaos and injustice.² Thus, Dand was considered essential for ensuring social stability, protecting the

² <https://testbook.com/ugc-net-philosophy/danda>

weak, and upholding moral norms.

Kautilya's Arthashastra presents Dand as the foundation of statecraft. According to Kautilya, the king's primary duty was to administer Dand justly and effectively³. He argued that Dand was the means by which the ruler maintained order, deterred wrongdoing, and ensured obedience to laws. The king was described as the embodiment of Dand, and his legitimacy depended on his ability to enforce justice impartially. Excessive punishment was discouraged, as it could lead to tyranny, while leniency could result in disorder. Therefore, Dand had to be applied with wisdom, proportionality, and ethical judgment.

The Dharmashastras, including the Manusmriti, also emphasized Dand as a moral and legal necessity. These texts linked punishment with righteousness, asserting that the ruler must punish offenders to preserve Dharma. Dand was not only punitive but also corrective, aiming to reform individuals and maintain social harmony. Punishment was graded according to social status, intent, and the nature of the offense, reflecting the hierarchical nature of ancient Indian society.

Importantly, Dand functioned as a system of governance beyond criminal law. It regulated administrative conduct, economic activities, and social behavior. Officials who abused power were subject to punishment, and economic offenses such as fraud and corruption were strictly regulated. Thus, Dand served as a mechanism of accountability within the state apparatus. Moreover, Dand was connected to cosmological and ethical ideas. It was believed that punishment upheld cosmic order and divine justice. The ruler was seen as a moral agent responsible for ensuring justice on earth. This integration of law, morality, and governance distinguishes Dand from modern secular penal systems.

Punishment is the legally authorized imposition of a penalty on a person who has committed an offense. It is an essential part of the criminal justice system and serves to maintain social order, uphold the rule of law, and express society's condemnation of wrongdoing. Punishment aims to protect society, deter crime, reform offenders, and deliver justice to victims.

The **Retributive Theory** is based on the idea that offenders deserve to be punished for their wrongful acts. It emphasizes moral responsibility and proportionality, meaning the punishment

³ <https://polsci.institute/indian-political-thought-1/coercive-power-state-kautilya-arthashastra>

should fit the crime.

The **Deterrent Theory** views punishment as a means to prevent crime by instilling fear of legal consequences. It operates through specific deterrence (preventing the offender from reoffending) and general deterrence (discouraging others from committing crimes).

The **Reformative Theory** focuses on rehabilitating offenders through education, counseling, and correctional programs, aiming to transform them into law-abiding citizens.

The **Restorative Theory** seeks to repair the harm caused by crime by involving victims, offenders, and the community in the justice process, promoting reconciliation and social harmony. Together, these theories provide a comprehensive framework for understanding the purpose and philosophy of punishment. In conclusion, Dand in ancient Indian jurisprudence was a comprehensive system that combined punishment, governance, and moral philosophy. It functioned as a tool of state authority, a mechanism for social regulation, and a moral duty of the ruler. Unlike modern punitive systems that separate law from ethics, Dand represented a holistic vision of justice where governance and morality were inseparable.

CHAPTER 3

Nyaya as Justice-Oriented Governance

How does the concept of Nyaya function as a framework for justice-oriented governance in Indian legal and political philosophy?

Nyaya is a foundational concept in Indian jurisprudence and political philosophy that signifies justice, fairness, and moral righteousness. Unlike a purely legalistic notion of law, Nyaya represents a broader framework of justice-oriented governance that integrates law, ethics, and social welfare. In ancient Indian thought, governance was considered legitimate only when it was guided by Nyaya, ensuring fairness, equity, and protection of the weak.

Classical texts such as the Dharmashastras and Kautilya's Arthashastra emphasized that rulers must govern according to Nyaya, meaning decisions should be just, impartial, and aligned with Dharma (moral order). Nyaya required the king and state institutions to deliver justice not merely through punishment, but through equitable administration, dispute resolution, and welfare policies. It also implied accountability of rulers, as unjust governance was considered

morally and politically illegitimate.

In contrast to modern legal positivism, which often prioritizes procedural legality, Nyaya focuses on substantive justice and social harmony. In contemporary India, the revival of Nyaya as a governance principle reflects efforts to move beyond colonial punitive frameworks toward justice-centered administration. Thus, Nyaya represents an indigenous model of governance that prioritizes moral legitimacy, social equity, and holistic justice.

The concept of *Nyaya*, often translated as “justice” or “equity,” occupies a central position in Indian legal and political philosophy⁴. Unlike a narrow, procedural view of law, *Nyaya* encompasses moral, social, and political dimensions of governance. It integrates ethical principles with legal administration and reflects a broader conception of justice, where law, morality, and societal welfare are inseparable. In classical Indian thought, *Nyaya* was not merely a legal doctrine but the guiding principle for rulers, institutions, and society, ensuring that governance serves the dual purpose of maintaining order and upholding moral righteousness.

Classical texts, particularly the *Dharmashastras* and Kautilya’s *Arthashastra*, provide detailed insights into the practical application of *Nyaya* in governance. According to these texts, a ruler’s legitimacy depended on his ability to administer justice impartially. Governance guided by *Nyaya* emphasized fairness in resolving disputes, proportionality in punishment, protection of the weak, and adherence to ethical norms. Punishment (*Danda*), while a tool of governance, was justified only when it aligned with justice and moral principles. In this sense, *Nyaya* functions as a normative framework that shapes the objectives, limits, and methods of political authority.⁵

The essence of *Nyaya*-oriented governance lies in balancing law with morality. While legal instruments such as codes, edicts, and regulations provide procedural mechanisms, *Nyaya* ensures that these instruments are applied in a manner that is equitable and socially responsible. For example, classical texts prescribe differential treatment in administering justice based on context, intention, and societal impact, rather than applying rules rigidly. This approach demonstrates an early recognition of substantive justice, emphasizing outcomes rather than

⁴ Sharma, Arvind. “Indian Political Thought and Justice (Nyaya).” *Journal of Indian Philosophy*, vol. 47, no. 3, 2019, pp. 345–367.

⁵ <https://www.sacred-texts.com/hin/arth/index.htm>

mere compliance with legal norms.

Nyaya also incorporates accountability and ethical responsibility of rulers. The ruler or state is considered a moral agent who must act to protect the welfare of citizens and preserve societal harmony. Failure to uphold *Nyaya* was not only a political failure but also a moral and cosmic violation, as governance was linked to *Dharma*, the overarching moral order. This connection between law, ethics, and governance distinguishes *Nyaya*-oriented administration from purely authoritarian or coercive systems, highlighting its normative and justice-oriented character.

In contrast to colonial and modern legal systems, which often emphasize codification, proceduralism, and punitive measures, *Nyaya* prioritizes justice as a holistic goal. While colonial criminal law, exemplified by the Indian Penal Code of 1860, focused on deterrence, retribution, and centralized state control, *Nyaya*-based governance centers on fairness, reconciliation, and social welfare. Indigenous mechanisms such as village councils (*panchayats*) and community dispute resolution practices reflected the practical application of *Nyaya*, emphasizing restorative and community-oriented justice over punishment alone⁶.

In contemporary India, the principle of *Nyaya* continues to influence legal reforms and governance debates. Efforts to introduce restorative justice measures, emphasize judicial accountability, and ensure equitable access to justice echo the normative vision of *Nyaya*. Moreover, constitutional provisions guaranteeing equality, protection of rights, and social justice can be interpreted as a modern institutionalization of the *Nyaya* principle. This indicates that while legal frameworks have evolved, the moral and justice-oriented foundations of governance in Indian thought remain relevant.

In governance, *Nyaya* encourages decision-making that prioritizes social welfare, protects the vulnerable, and ensures transparency. Modern Indian administrative institutions can adopt *Nyaya*-inspired frameworks by promoting equitable policy implementation, participatory governance, and accountability mechanisms. For example, initiatives like grievance redressal systems, citizen charters, and social welfare programs reflect the ethical and justice-oriented approach of *Nyaya*, where the state acts as a moral agent ensuring fairness and societal well-being.

In criminal justice, *Nyaya* can guide reforms by focusing on rehabilitation, restorative justice,

⁶ <https://link.springer.com/article/10.1007/s10781-019-09384-5>

and proportional punishment. Ancient Indian governance linked punishment (*Dand*) to morality and social balance, not just deterrence. Applying this principle today could mean emphasizing alternatives to incarceration, such as community service, mediation, victim-offender reconciliation, and rehabilitation programs. Such approaches ensure justice is not merely punitive but socially constructive and restorative.

Furthermore, Nyaya underscores the importance of accountability for decision-makers, which can inform judicial and law enforcement practices. Ensuring impartiality, reducing bias, and addressing systemic inequities in policing, prosecution, and sentencing are ways to operationalize Nyaya in modern legal systems.

In conclusion, Nyaya functions as a comprehensive framework for justice-oriented governance by integrating law, morality, and social welfare. It guides rulers and institutions to administer justice fairly, protect the vulnerable, and ensure social harmony. By emphasizing substantive justice, accountability, and ethical responsibility, Nyaya contrasts with purely punitive or procedural approaches, offering a vision of governance that is both morally legitimate and socially responsive. In the post-colonial Indian context, reviving Nyaya as a guiding principle provides a pathway for decolonizing legal systems and embedding justice at the core of governance.

CHAPTER 4

Replacing the Penal Code: India's Move from Retribution to Justice

How does the replacement of the term “Penal Code” with “Nyaya Sanhita” reflect India's shift from a punishment-oriented criminal justice framework to justice-oriented governance?

India's criminal justice system underwent one of the most significant transformations in its legal history on July 1, 2024, when the long-standing Indian Penal Code (IPC, 1860) was replaced by the Bharatiya Nyaya Sanhita (BNS, 2023). This change was part of a larger overhaul that also repealed the Code of Criminal Procedure (CrPC, 1898) and the Indian Evidence Act (1872), replacing them with the Bharatiya Nagarik Suraksha Sanhita (BNSS) and the Bharatiya Sakshya Adhinyam (BSA) respectively.

This shift was more than a mere renaming of statutes. It symbolises a deeper change in the way the Indian criminal law system views justice — from a system primarily focused on punishment

to one that emphasises justice, fairness, rehabilitation, citizen protection, and constitutional values. The new term “*Nyaya Sanhita*” itself carries meaning: *Nyaya* in Indian philosophical tradition represents justice and fairness, not just punishment. This contrasts with the colonial legacy of the IPC, which reflected retributive and deterrent concepts characteristic of British imperial governance.

Historical Background: From Colonial Penal Code to Post-Colonial Reform

The Indian Penal Code (IPC) was enacted in 1860 during British colonial rule. Its primary purpose was to maintain public order and control in a colonised population rather than reflect Indian social, cultural, or moral outlooks on justice. The IPC’s structure, terminology, and purpose were shaped largely by British legal philosophies focusing on punishment as a response to wrongdoing. This was consistent with retributive (punishing the offender) and deterrent (preventing future crimes by fear of penalty) theories that dominated Western criminal justice systems of the time. While these theories are part of modern jurisprudence, in the colonial context they were often applied in ways that emphasised control over rehabilitation or social justice.

The IPC, along with CrPC and the Evidence Act, became symbols of a punishment-oriented legal order. After independence in 1947 India adopted a democratic Constitution committed to justice, equality, liberty, and dignity. Yet, the basic corpus of criminal law remained rooted in the IPC framework a colonial legacy passed down for over 160 years.

The Meaning Behind the Name Change

Language is never neutral; it shapes how we understand concepts, institutions, and social values. The change in terminology from “**Penal Code**” to “**Nyaya Sanhita**” carries profound philosophical and symbolic significance. The word *penal* derives from the Latin *poena*, meaning punishment or penalty. In legal terms, it emphasizes penalties, retribution, and deterrence, reflecting a system primarily focused on the state’s authority to punish wrongdoing. While this framework has its practical purposes, it inherently prioritizes punishment over justice, often reducing the law to a set of prescriptive rules and penalties rather than a holistic mechanism to uphold fairness and social harmony⁷.

In contrast, *Nyaya* is a Sanskrit term that encompasses justice, fairness, equity, and rightful

⁷ <https://knowlaw.in/2024/10/22/justice-to-nyaya-ditching-the-colonial-legacies-of-criminal-jurisprudence>

adjudication. Its roots in classical Indian philosophy extend beyond legal formalism, reflecting a normative and moral framework in which law is aligned with ethics, social responsibility, and the welfare of all stakeholders including victims, offenders, and society at large. In the Indian philosophical context, Nyaya is closely associated with dharma, the moral order, and emphasizes that governance is legitimate only when it serves justice and protects the rights and dignity of individuals.

By naming the new criminal law the Bharatiya Nyaya Sanhita, lawmakers signal a deliberate departure from a purely punitive approach toward a justice-oriented framework. The term conveys that law is no longer merely about inflicting penalties but about balancing the needs of victims, reforming offenders, and promoting social equity. It also reflects India's aspiration to reclaim indigenous values and legal philosophy that predate colonial rule, where punishment (Dand) was always contextualized within the broader moral and social responsibilities of governance.

Moreover, this name change carries a symbolic message to society. It positions the law as a tool for fairness, reconciliation, and ethical governance rather than mere coercion. It communicates a shift in focus from reactive punishment to proactive justice, emphasizing prevention, rehabilitation, and restoration wherever possible. For instance, provisions in the Bharatiya Nyaya Sanhita promoting community service, victim compensation, and alternative dispute resolution mechanisms exemplify how justice now encompasses societal balance and moral accountability, not just incarceration or fines. In essence, the renaming is both philosophical and practical.

Philosophical Shift: Beyond Punishment

a. De-Emphasising Retribution

Under the IPC, a significant number of provisions were punishment-centric — designed to penalise offenders without necessarily addressing rehabilitation or social reintegration. For example, certain offences like attempted suicide (under Section 309 IPC) were criminalised, reflecting older punitive beliefs. In contrast, the Nyaya Sanhita does not criminalise attempted suicide, reflecting a **more humane and justice-oriented approach** that recognises mental stress and social causes.

b. Victim-Centric and Reformatory Elements

Under the new code, provisions like **community service as a form of punishment** were introduced for certain minor first-time offences. This is a departure from imprisonment and indicates a **reformatory and restorative approach**. Community service allows offenders to engage positively with society rather than being isolated in prison⁸.

The new law also simplifies and broadens access to justice through **Zero FIRs** and **online complaint registration**, reflecting an emphasis on **accessibility and fairness** rather than procedural rigidity.

c. Removing and Revising Colonial Concepts

The Nyaya Sanhita repeals certain colonial constructs such as sedition as defined under IPC Section 124A. The law replaces this with broader provisions against actions that threaten national security but strips away language historically used to suppress dissent. The removal of archaic and colonial language terms (like “justice of the peace”, “British India”, etc.) and their replacement with neutral, inclusive language further underscores a break from punitive colonial lexicon.

All these reforms indicate a philosophical shift from **colonial punitive legalism to constitutional moral governance** law that respects individual dignity and societal harmony.

Practical Changes Reflecting Justice-Oriented

a. Victim Protection and Fair Process

The Nyaya Sanhita emphasises protections for victims, especially vulnerable groups such as women and children. It ensures that police must register FIRs in cases involving women and children, increasing accountability. Deadlines for investigation completion (90 days for general offences and 120 days for crimes against women and children) aim to reduce delays that often undermine justice.

⁸ <https://www.indiatimes.com/news/india/indian-penal-code-vs-bharatiya-nyaya-sanhita-major-changes-62403>

b. Rehabilitation Focus

By introducing reformatory tools such as community service and reorganising the offence sections to reflect modern needs (including cybercrime and organised crime), the Nyaya Sanhita goes beyond mere punishment. It recognises that justice includes **social rehabilitation and reintegration**.

c. Transparency and Citizen-Centric Features

Features such as **technology-driven FIR filing, SMS updates, and mandatory recordings of searches and seizures** are designed to increase accountability and transparency of the justice process rather than obscure it in procedural complexity. These measures reflect a governance model that prioritises **citizen rights and procedural fairness** over mere punishment.

The replacement of the term “Penal Code” with “Nyaya Sanhita” is emblematic of India’s evolving criminal justice philosophy. Rather than simply renaming a statute, the overhaul represents:

- A move away from a colonial, punishment-centric paradigm
- A shift toward constitutional morality, procedural fairness, rehabilitation, and citizen protection
- An emphasis on justice that is accessible, inclusive, and equitable.

While implementation and interpretation will continue to shape how effectively this justice orientation materialises, this renaming and the substantive reforms accompanying it reflect a **“historic and philosophical shift in India’s approach to criminal justice and governance”**.

Continuities with the IPC

Despite these reforms, certain aspects of BNS remain **continuities rather than radical departures**:

1. **Core Offences:** Many crimes defined in the IPC — murder, theft, assault, fraud — retain similar legal definitions and penal consequences. The structure of punishment for serious offences continues to follow the IPC framework.

2. **Procedural Elements:** While BNS aligns with modern principles, it retains elements of traditional adversarial procedures, investigations, and trials. Courts continue to interpret offences largely in ways consistent with IPC jurisprudence.
3. **State-Centric Enforcement:** Though the law emphasizes justice and rehabilitation, policing and prosecution remain **state-driven**, much as under the IPC. The law continues to rely heavily on formal enforcement rather than purely restorative or community-based approaches.

Thus, while philosophical framing has shifted, **the legal machinery continues to operate on principles similar to the IPC**, raising the question of whether the reforms are **substantive or largely cosmetic**.

CHAPTER 5

BNS and the Question of Substantive Penal Reform

Do the Bharatiya Nyaya Sanhita Changes Constitute Substantive Reform or Mere Repackaging of the IPC?

The replacement of the IPC with the Bharatiya Nyaya Sanhita represents both substantive reform and repackaging, depending on the lens through which it is analyzed:

The replacement of the **Indian Penal Code (IPC)** with the **Bharatiya Nyaya Sanhita (BNS)** can be understood as embodying both **substantive reform** and **repackaging**, depending on how one examines its scope and impact. On one hand, the changes reflect **genuine, normative, and practical shifts** in the philosophy and functioning of India's criminal justice system. On the other hand, certain continuities with the IPC demonstrate that the reform maintains structural stability, which is essential for legal clarity and continuity. This dual character makes BNS a **hybrid approach**, blending innovation with inherited frameworks.

Substantive Reform

From the perspective of **substantive reform**, BNS represents a **philosophical reorientation** of criminal law. Unlike the IPC, which was largely punitive and focused on

deterrence and retribution, BNS emphasizes **justice (Nyaya) as the central principle**. This shift is reflected in multiple ways:

1. **Victim-Centric Provisions:** The new law strengthens protections for victims, particularly vulnerable groups such as women, children, and marginalized communities. For instance, mandatory timelines for investigation in cases of crimes against women and children aim to ensure swift justice, addressing a historical criticism of delays in the IPC framework. These reforms are not merely procedural tweaks; they signal a **shift toward balancing the rights of victims with those of the accused**.
2. **Rehabilitation Mechanisms:** BNS introduces alternatives to traditional incarceration, such as community service, probation, and restorative justice programs for minor or first-time offences. By focusing on rehabilitation and reintegration rather than just punishment, the law reflects a **transformative approach**, aligning the criminal justice system with modern global best practices in restorative justice.
3. **Modernization for Contemporary Challenges:** The BNS addresses crimes that were underrepresented or outdated in the IPC, including cybercrimes, digital harassment, and organized crime. It also incorporates inclusive, citizen-friendly language, removing
4. Overall, from this lens, the BNS represents a philosophical and practical departure Repackaging from archaic colonial terminology. These innovations reflect a normative commitment to making the law relevant, accessible, and socially responsive.the IPC, embedding principles of fairness, equity, and justice into the core of India's criminal law.

However, when viewed from a structural and operational perspective, BNS also exhibits significant continuity with the IPC, which some critics interpret as mere repackaging:

1. **Core Offences Remain Largely Unchanged:** Fundamental criminal acts, such as murder, theft, assault, and fraud, retain their definitions and penal consequences from the IPC. While terminology and some procedural aspects have been updated, the **substance of core offences remains intact**, ensuring continuity in legal interpretation.
2. **State-Centered Enforcement:** Despite introducing victim-centric and rehabilitative measures, the BNS continues to rely on **state agencies—police, prosecutors, and**

courts—for enforcement. The framework remains adversarial in nature, and the primary mechanism for enforcing the law is still through formal state authority, similar to the IPC.

3. **Sentencing Ranges and Penal Logic:** While BNS incorporates alternative sentences for minor offences, the **punishments for serious crimes continue to mirror IPC provisions**, maintaining the traditional balance between deterrence and societal protection.

Thus, from a conservative perspective, one could argue that BNS is essentially **the IPC in a modernized, justice-oriented wrapper**, retaining legal continuity while projecting the appearance of reform.

A Hybrid Approach

In essence, the BNS embodies a hybrid approach, redefining the purpose of criminal law from punishment centered governance to justice-oriented governance, while retaining sufficient continuity to maintain stability in legal interpretation and administration. This duality ensures that:

- The law breaks free from colonial punitive legacies and aligns with contemporary Indian values of justice, fairness, and human dignity.
- It preserves legal consistency, so courts, law enforcement agencies, and citizens can adapt to the new framework without facing disruptive legal ambiguity.

The success of BNS in realizing its promise depends heavily on implementation, judicial interpretation, and systemic reforms in policing, prosecution, and correctional practices. For instance, rehabilitative provisions will only be effective if police and judiciary actively prioritize alternative sentencing, community service, and restorative justice mechanisms. Similarly, victim-centric measures will require institutional commitment, training, and monitoring to translate statutory provisions into real-world justice. In conclusion, while critics may argue that BNS is “IPC in a new wrapper,” its emphasis on justice, fairness, and rehabilitation signals a historic philosophical shift that, if effectively implemented, can transform India’s criminal justice system from a punitive legacy into a citizen-centric, justice-oriented framework.

CONCLUSION

The evolution from Dand to Nyaya reflects a profound transformation in India's penal philosophy, moving from a punishment-centered framework rooted in colonial and pre-colonial retributive practices toward a justice-oriented, morally grounded, and citizen-centric approach. Historically, the administration of punishment in India was guided by ethical, social, and political considerations, with the goal of maintaining moral order (Dharma) and societal harmony. However, the introduction of the Indian Penal Code (IPC) during British rule shifted the focus toward deterrence and state control, often overlooking the principles of fairness, rehabilitation, and restorative justice inherent in indigenous legal thought.

The enactment of the Bharatiya Nyaya Sanhita (BNS, 2023) represents a conscious attempt to decolonize India's criminal justice system. By replacing the term "Penal Code" with "Nyaya Sanhita," the law signals a deliberate reorientation toward justice (Nyaya) as its guiding principle. The BNS introduces reforms that are both philosophical and practical: it emphasizes victim protection, rehabilitation, alternative sentencing, modernization to address contemporary challenges, and alignment with constitutional values of equality, liberty, and dignity. These changes indicate a departure from a purely punitive model and demonstrate India's commitment to a justice-centric governance framework.

At the same time, the BNS maintains continuity in core offences, sentencing ranges, and state-centric enforcement mechanisms, ensuring legal stability and predictability. This dual character reformist in philosophy yet stable in structure — reflects a hybrid approach, balancing innovation with continuity. The ultimate success of this transformation will depend on effective implementation, judicial interpretation, and systemic reforms in policing, prosecution, and correctional practices.

In conclusion, the shift from Dand to Nyaya is more than terminological or symbolic; it is a historic philosophical and practical evolution in India's approach to criminal justice. If fully realized, it has the potential to transform India's legal system from a punitive legacy into a restorative, equitable, and citizen-centered framework, honoring both the moral and constitutional imperatives of justice in contemporary society.

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