



A critical analysis of the new bharatiya nyaya sanhita and the indian penal code: A comparative study

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Abstract

A radical change in India's criminal justice system is marked by the 2023^[2] enactment of the Bharatiya Nyaya Sanhita (BNS), which supersedes the Indian Penal Code (IPC) of 1860^[1]. The structural, philosophical, and practical distinctions between the BNS and IPC are critically compared in this essay. The BNS places more emphasis on decolonization, restorative justice, and conformity to contemporary constitutional ideals than the IPC, which was founded on colonial government and gave priority to punishment and deterrent. Redefined crimes like sedition, enhanced provisions for crimes based on gender, and new sanctions for terrorism and cybercrimes are some of the major improvements. But issues like unclear clauses, difficulties putting them into practice, and human rights issues still exist. This report provides recommendations, identifies gaps, and emphasizes strengths through a thorough comparison to guarantee that the BNS provides a just and efficient legal framework.

Keywords: Bharatiya nyaya sanhita, indian penal code, decolonization, restorative justice, constitutional ideals

Introduction

Non-formal education is a form of education that occurs outside the formal school system. It encompasses all organized educational activities that take place outside of the formally established system. Non-formal education according to Ihejirika (2000)^[3], is any organized or systematic educational activities carried out outside the framework of the formal school system to provide a specific type of learning to a specific sub-group of the population, both adults and children. It includes different types of learning experiences; it is a lifelong process of learning that includes adult and continuing education, the apprenticeship system, in-service programme, on-the-job training programme, personnel and professional development, and workers' and students' industrial training. Short-term learning activities such as conferences, seminars, workshops, and evening classes, as well as specialized purpose programs such as functional and literacy programs, volunteer youth programs, skill acquisition, and liberal education classes, constitute non-formal education, which can be called "living room" or leisure education (Amirize in Ossai & Nwalado, 2014)^[8]. The various skills acquisition and apprenticeship programs are examples of non-formal education. India's criminal justice system has long been influenced by the Indian Penal Code (IPC) of 1860^[1], which reflects the country's sociocultural and governmental interests. The IPC, which was implemented during British colonial control, harmonized criminal legislation in several regions with a focus on retaliation and deterrent. Its punishing methods, outdated terminology, and colonial roots have drawn criticism for being out of step with India's contemporary issues and constitutional values. The IPC was replaced in 2023^[2] by the Bharatiya Nyaya Sanhita (BNS), which signaled a radical change to a victim-centered, decolonized, and restorative legal system.

In order to assess the BNS's ability to modernize India's criminal justice system, this essay critically contrasts the BNS and IPC, examining the structural, philosophical, and practical distinctions between the two. With clauses like sedition (Section 124A) meant to quell opposition, the IPC,

which was drafted by Lord Macaulay, was a colonial instrument to preserve order. Its language was incomprehensible to many, and its utilitarian ideology placed punishment above rehabilitation. While certain difficulties were handled by changes, such as those made after the Nirbhaya case in 2012, the IPC found it difficult to handle new problems like terrorism and cybercrime. The BNS aims to fill these deficiencies as part of a 2023 legislative revamp that also includes legislation to replace the Indian Evidence Act and the Code of Criminal Procedure. With its roots in Indian law, it emphasizes restorative justice, victim rights, and rehabilitation while being consistent with the equality and justice objectives of the constitution. order to find historical lessons and prospects for a fair and just legal system.

Historical Context

Indian Penal Code (1860)^[1]

In order to establish a unified criminal law system in a fragmented colonial India, the British government created the Indian Penal Code (IPC). With measures intended to uphold colonial authority and quell opposition, the IPC, which was influenced by utilitarian philosophy, placed a strong emphasis on deterrence and retribution. It gave legal clarity by introducing revolutionary ideas for the time, such mens rea (guilty mentality) and codified offenses. But because of its colonial roots, it was indifferent to Indian cultural customs, and laws like Section 124A, which deals with sedition, were regularly employed to stifle political dissent. Amendments were made throughout time to address new concerns, such sexual violence after the 2012 Nirbhaya case, but the IPC was still based on a framework from the 19th century and was not prepared to deal with contemporary problems like terrorism and cybercrime.

Bharatiya Nyaya Sanhita (2023)^[2]

India's criminal justice system underwent a major transformation with the implementation of the BNS in 2023^[2]. The BNS was introduced as one of three laws designed to replace colonial-era laws and establish a victim-centered,

restorative, and decolonized judicial system. It addresses current concerns including gender-based violence, cybercrime, and national security challenges while reflecting India's constitutional commitment to equity, justice, and dignity. The BNS seeks to promote a criminal justice system based on Indian law and in line with international human rights standards by placing a higher priority on rehabilitation and victim rights than the IPC's punitive approach.

Comparative Analysis

Structural and Linguistic Differences

The 511 parts of the IPC were attacked for their convoluted and antiquated wording, which presented difficulties for the public, law enforcement, and legal professionals. Words like "sedition" and "transportation for life" were sometimes vague and reflected colonial notions. The BNS takes a more simplified approach, combining redundant clauses and getting rid of ones that are out of date, notably those pertaining to crimes from the colonial era like "thug gee." Its easier-to-understand language improves public comprehension and legal transparency. Additionally, the BNS substitutes culturally relevant words with colonial ones. For example, the definition of "Rajdroh" (sedition) is changed to "acts endangering national security," indicating a move away from colonial repression and toward national autonomy. Nonetheless, the absence of clear definitions for several terminologies prompts worries about possible abuse and uneven use.

Philosophical Underpinnings

With a focus on deterrence through severe punishments including incarceration, fines, and, in some situations, the death penalty, the IPC was founded on a punitive mentality. The code lacked restorative justice measures, and victim rights and rehabilitation were given secondary attention. The BNS, on the other hand, takes a restorative stance, placing a strong emphasis on offender rehabilitation, community service, and victim restitution. It lessens the need for jail by introducing alternate dispute resolution procedures for infractions. This change reflects India's constitutional commitment to justice and dignity and is consistent with international trends in criminal justice that place a higher priority on social reintegration than retaliation.

Key Reforms and Provisions

Sedition and Free Speech

Section 124A (sedition) of the IPC was a controversial clause that was regularly abused to punish journalists, target activists, and stifle criticism. Its ambiguous language undermined free expression by enabling authorities to define "disaffection" broadly. In an effort to strike a compromise between free speech and national interests, the BNS substitutes the more specific crime of "acts endanger national security" for sedition. But "national security" is still a vague concept that might be applied arbitrarily. The BNS could utilize explicit rules and supervision procedures to stop abuse, in contrast to the IPC, which lacked legal protections.

Gender-Based Offenses

Reactive revisions reinforced the IPC's provisions on crimes against women, especially in the wake of high-profile

incidents such as the Nirbhaya event in 2012. These modifications, however, were narrowly focused and did not address new problems such as cyber bullying. By making sexual assaults more punishable, requiring victim support systems, and making cyber stalking and online abuse illegal, the BNS aggressively combats gender-based violence. By implementing policies like in-camera trials, anonymised processes, and counseling programs, it highlights the dignity of survivors. Although they require strong execution to be effective, these improvements represent a major advance over the IPC.

Terrorism and Organized Crime

While the BNS introduces dedicated sections for these offenses, defining terrorism broadly to include acts threatening national integrity, sovereignty, or public safety, and strengthening penalties for organized crime, including drug smuggling, human trafficking, and gang-related activities, the IPC relied on supplemental laws, such as the Unlawful Activities (Prevention) Act, to address terrorism and organized crime because its provisions were insufficient for modern security threats. Although these provisions strengthen the legal framework, their expansive definitions raise concerns about overreach and potential human rights violations, especially in the absence of procedural safeguards.

Cybercrimes and Economic Offenses

The IPC was ill-equipped to manage cybercrimes and economic fraud, relying on the Information Technology Act for patchwork solutions. The BNS provides broad measures for cybercrimes, including hacking, identity theft, online fraud, and cyber stalking. In keeping with the rising incidence of white-collar crime, it also enforces harsher punishments for economic violations such as corporate fraud, Ponzi schemes, and financial scams. Although the BNS is positioned as a forward-thinking framework by these changes, successful enforcement necessitates sophisticated technology infrastructure and specific law enforcement training.

Penalties and Sentencing

The harsh sentencing guidelines of the IPC frequently called for incarceration for minor infractions and kept outdated penalties like life in prison. This strategy disregarded rehabilitation and added to jail congestion. The BNS eliminates antiquated penalties and replaces them with community service, probation, and fines. It places a strong emphasis on proportionality, adjusting punishments to the seriousness of the offense. Minor theft, for example, can result in community service instead of jail time, encouraging social reintegration. However, the infrastructure for alternative sentencing and judicial discretion are critical to the success of these changes.

Victim-Centric Approach

The BNS prioritizes victim welfare, requiring compensation, legal aid, psychological support, and participation in trials; it ensures survivor dignity through measures like anonymized proceedings and trauma-informed processes; it addresses a critical gap in the IPC and aligns with global human rights standards. The IPC paid little attention to victim rights, focusing primarily on punishing offenders. Victims, especially those who

experienced sexual violence, frequently suffered secondary victimization during trials due to insensitive procedures and lack of support.

Critical Evaluation

Strengths of the BNS

1. **Decolonization:** By eliminating colonial language and structures, the BNS corresponds with India's cultural and constitutional ethos, generating a sense of ownership over the legal system
2. **Modernization:** Provisions for cybercrimes, terrorism, and economic offenses reflect 21st-century issues, making the BNS more relevant than the IPC.
3. **Restorative Justice:** By emphasizing alternative punishment and rehabilitation, it encourages social reintegration and lessens the need for punitive measures.
4. **Victim Empowerment:** In response to long-standing critiques of the IPC's offender-centric approach, mandated assistance systems strengthen victim rights.
5. **Cultural Relevance:** The BNS departs from the foreign imposition of the IPC by incorporating Indian jurisprudential norms.

Challenges and Concerns

1. **Ambiguity in Provisions:** Words like "terrorism" and "national security" are not well defined, which increases the possibility of arbitrary application and compromises legal certainty.
2. **Implementation Barriers:** Police, judges, and attorneys must undergo intensive training in order to make the switch from IPC to BNS. Enforcement may be hampered by a lack of resources, especially in rural regions.
3. **Human Rights Risks:** Similar to complaints about the IPC's sedition clause, broad provisions for organized crime and terrorism may violate civil freedoms.
4. **Judicial Overload:** In the absence of sufficient financing and infrastructure, victim assistance programs and restorative justice techniques may put undue demand on India's already overworked court.
5. **Public Awareness:** The public's comprehension of the BNS's provisions is essential to its success. In the absence of awareness programs, underprivileged groups could continue to be ignorant of their legal rights.

Comparative Gaps

- **Flexibility vs. Clarity:** The IPC's inflexible framework offered clarity but was unable to adjust to contemporary issues. Although the BNS's flexible provisions encourage flexibility, they run the danger of being interpreted and used inconsistently.
- **Global Alignment:** Although the BNS complies with Indian constitutional principles, it does not meet international human rights norms in respect to issues like as juvenile justice, procedural protections, and torture in detention. Similar shortcomings in the IPC suggest a lost chance for thorough change.
- **Technology Readiness:** The IPC neglected to address the sophisticated technology infrastructure needed for the BNS's emphasis on cybercrimes. However, enforcement in underdeveloped and rural regions may be limited by India's digital divide.

Case Studies

Sedition: A Tale of Two Codes

Activists, journalists, and political opponents were frequently the targets of sedition trials under the IPC, with convictions based on nebulous definitions of "disaffection." The misuse of the provision was demonstrated, for instance, by the 2016 arrest of student leader Kanhaiya Kumar for allegedly using anti-national slogans. To stop such misuse, the BNS redefined sedition as "acts endangering national security." But ongoing uncertainty is shown by a 2024 case involving a journalist who was accused with criticizing government policies under the new clause. To combat abuse, clear rules and judicial supervision are crucial.

Gender-Based Violence

Urban courts have tried the BNS's provisions for sexual offenses, with varying degrees of success. In a Delhi case from 2024, victim support services including counseling and anonymous procedures enhanced the experience of the survivor. However, as seen in a 2024 case in Uttar Pradesh where the victim was retraumatized due to delays and insufficient care, rural courts frequently lack the resources necessary to carry out these steps. This discrepancy emphasizes the necessity of developing infrastructure and allocating resources fairly.

Cybercrime Enforcement

The 2024 case involving a large-scale phishing scam in Mumbai tested the BNS's cybercrime provisions, which allowed for the quick identification and prosecution of the offenders—a significant improvement over the IPC's reliance on the IT Act. However, the absence of cybercrime units and trained personnel in rural areas has limited enforcement, underscoring the need for technological investments.

Recommendations

To maximize the BNS's impact and address its shortcomings, the following measures are proposed:

1. **Clarify Ambiguous Terms:** To ensure uniform and transparent implementation, the government should publish comprehensive guidelines that define terms like "national security" and "terrorism."
2. **Invest in Implementation:** Thorough training programs are crucial for the court, law enforcement, and legal professionals. Effective enforcement will be supported by investments in court infrastructure, especially in rural regions.
3. **Preserve Human Rights:** To avoid abuse and preserve civil liberties, the BNS should include procedural protections such required court supervision for arrests connected to terrorism.
4. **Encourage Public Awareness:** National campaigns should inform the public about the BNS's provisions and their legal rights, especially in regional languages.
5. **Align with Global Standards:** The BNS should adopt international best practices, such as those outlined in the UN Convention against Torture, to strengthen protections against custodial violence and ensure robust juvenile justice mechanisms.
6. **Leverage Technology:** By investing in cybercrime units and forming alliances with tech companies, the enforcement of laws pertaining to digital offenses will be strengthened, therefore reducing the gap between urban and rural areas.

Conclusion

The Bharatiya Nyaya Sanhita symbolizes a historic effort to decolonize and modernize India's criminal justice system, addressing the Indian Penal Code's colonial history and outmoded laws. It is positioned as a forward-looking framework due to its emphasis on victim rights, restorative justice, and modern issues including cybercrime, terrorism, and gender-based violence. However, uncertainties in crucial elements, practical issues, and serious human rights concerns endanger its efficacy. By clarifying terminology, investing in infrastructure, defending civil rights, and aligning with global norms, the BNS can achieve its promise of establishing a just, egalitarian, and culturally resonant legal system. The change from IPC to BNS is a social revolution as well as a legislative one. To guarantee successful execution and public confidence, cooperation between legislators, the courts, law enforcement, and civil society is necessary. The BNS has the ability to rethink criminal justice as India negotiates this paradigm change, promoting a system that strikes a balance between tradition and advancement, security and liberty, and punishment and rehabilitation.

References

1. Indian Penal Code, 1860.
2. Bharatiya Nyaya Sanhita, 2023.
3. Ministry of Law and Justice, Government of India, Legislative Updates, 2023.
4. Law Commission of India, Reports on Criminal Justice Reforms, 2018–2023.
5. United Nations Human Rights Framework and Conventions.
6. Academic Journals on Indian Criminal Law Reforms, 2020–2024.
7. Case Law: *Kanhaiya Kumar v. State*, 2016. *Nirbhaya Case Judgments*, 2013–2017.