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## BHARATIYA NYAYA SANHITA, 2023: REFORM OR MERE REPLACEMENT OF THE INDIAN PENAL CODE?

~Arunendra Kumar Sharma

### INTRODUCTION

Imagine living in a society where a criminal law drafted during **British colonial rule** continues to govern modern India even after more than 160 years. A law framed in 1860 for a colonial administration was still regulating crimes in an India driven by **smartphones, artificial intelligence, cyber fraud and digital transactions**. Sounds outdated, right? Yet, this was the reality until the introduction of the Bharatiya Nyaya Sanhita, 2023.

The **Bharatiya Nyaya Sanhita, 2023 (BNS)** was introduced with the objective of replacing the **Indian Penal Code, 1860** and modernising India's criminal justice system. The enactment of BNS is considered one of the most significant criminal law reforms in independent India because the Indian Penal Code had remained the backbone of criminal law for generations.<sup>1</sup>

For decades, the Indian Penal Code faced criticism for containing outdated provisions, colonial terminology and inadequate responses to modern crimes such as cyber fraud, organized crime and mob lynching. The debate surrounding sedition law under **Section 124A IPC** further intensified discussions regarding the need for reform. In **Shreya Singhal v. Union of India**, the Supreme Court strongly emphasized the *importance of protecting freedom of speech and expression in a democratic society*.<sup>2</sup>

At the same time, supporters of BNS argue that the new legislation introduces significant reforms by recognizing organized crime, terrorism and technology-related offences while also **promoting restorative justice through punishments such as community services**. Critics, however, argue that several provisions remain substantially similar to the IPC and that the

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<sup>1</sup> K.D. Gaur, Textbook on Indian Penal Code 3–5 (6th ed. 2016).

<sup>2</sup> Shreya Singhal v. Union of India, (2015) 5 SCC 1.

reform may be more structural than transformative.<sup>3</sup> **This raises an important question:** does the Bharatiya Nyaya Sanhita truly **reform** India's criminal justice system, or it merely **replaces** the IPC with a new name and reorganized provisions?

### **WHY THE INDIAN PENAL CODE NEEDED REFORM?**

Over time, it became clear that the Indian Penal Code, 1860 was no longer fully capable of addressing the realities of modern India.<sup>4</sup>

**The need for reform of the IPC increased due to the following reasons:**

- a) **COLONIAL NATURE OF THE IPC** – The IPC was drafted during British rule and several provisions reflected a colonial mindset inconsistent with modern democratic values.
- b) **CONTROVERSY SURROUNDING SEDITION LAW** – Section 124A IPC dealing with sedition remained highly debated due to concerns regarding misuse against criticism and dissent.<sup>5</sup>
- c) **RISE OF CYBER AND DIGITAL CRIMES** – Modern offences such as cyber fraud, identity theft, online scams and deepfake manipulation exposed the limitations of traditional criminal law provisions.<sup>6</sup>
- d) **INCREASING ORGANIZED CRIME AND MOB LYNCHING** – Growing incidents of organized criminal activities, terrorism and mob violence created a demand for stronger and more modern legal provisions.<sup>7</sup>
- e) **NEED FOR A REFORMATIVE JUSTICE SYSTEM** – The IPC primarily focused upon punitive punishments, while modern criminal jurisprudence increasingly emphasizes rehabilitation and restorative justice.
- f) **CHANGING CONSTITUTIONAL VALUES** – Expansion of fundamental rights by the judiciary required criminal law to align with dignity, liberty and constitutional morality.

As India evolved socially, technologically and constitutionally, reform of criminal law became

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<sup>3</sup> A Critical Analysis of the Bharatiya Nyaya Sanhita, 2023 and India's Criminal Law Renaissance, INT'L J. L. MGMT. & HUMAN. (2024), <https://ijlmh.com/paper/from-retribution-to-reform-a-critical-analysis-of-the-bharatiya-nyaya-sanhita-2023-and-indias-criminal-law-renaissance/> (last visited May 15, 2026).

<sup>4</sup> Ratanlal & Dhirajlal, The Indian Penal Code 5–7 (36th ed. 2019).

<sup>5</sup> Kedar Nath Singh v. State of Bihar, AIR 1962 SC 955.

<sup>6</sup> Cyber Crime in India: Trends and Challenges, PRS Legislative Research (last visited May 17, 2026).

<sup>7</sup> Organized Crime and Criminal Law Reforms in India, INDIA JUSTICE REP. (2024), <https://indiajusticereport.org/> (last visited May 15, 2026).

a practical necessity. The introduction of the Bharatiya Nyaya Sanhita, 2023 was therefore projected as an attempt to modernize India's criminal justice system according to present-day realities.

## MAJOR CHANGES INTRODUCED IN THE BHARATIYA NYAYA SANHITA, 2023

Some of the major changes introduced under BNS are as follows:

- a) **Removal of Sedition Law** – The offence of sedition under Section 124A IPC has been removed and replaced with provisions dealing with acts endangering the sovereignty, unity and integrity of India.
- b) **Recognition of Organized Crime and Terrorism** – BNS specifically addresses organized crime, terrorist acts and mob lynching within the criminal code itself.
- c) **Focus Upon Digital and Technology-Based Crimes** – The legislation attempts to respond to modern offences involving electronic evidence, cyber fraud and technologically driven criminal activities.
- d) **Introduction of Community Service** – Community service has been introduced as a punishment for certain minor offences, reflecting principles of restorative justice.
- e) **Victim-Centric Approach** – Greater emphasis has been placed upon protection of victims, especially women and children, along with speedy investigation and accountability.<sup>8</sup>

## CRITICISM AND CONSTITUTIONAL CONCERNS

The major criticisms surrounding BNS are as follows:<sup>9</sup>

### WHAT SUPPORTERS OF BNS SAY:

- It **removes** several colonial-era concepts from criminal law.
- It **recognizes** modern crimes such as organized crime, terrorism and mob lynching.
- It **introduces** community service reflecting restorative justice principles.
- It **attempts** to modernize criminal law according to present-day realities.
- It **places** greater focus upon victim-centric justice and accountability.

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<sup>8</sup>Victim-Centric Criminal Justice Reforms under Bharatiya Nyaya Sanhita, LIVE LAW (2024), <https://www.livelaw.in/articles/bharatiya-nyaya-sanhita-victim-centric-approach-analysis-259876> (last visited May 15, 2026).

<sup>9</sup>Constitutional Concerns Surrounding the Bharatiya Nyaya Sanhita, BAR & BENCH (2024), <https://www.barandbench.com/columns/constitutional-concerns-under-bharatiya-nyaya-sanhita-2023> (last visited May 17, 2026).

### WHAT CRITICS OF BNS ARGUE:

- Several IPC provisions continue with only **minor linguistic and structural changes**.
- Broad provisions relating to sovereignty and national security may **still affect** freedom of speech and dissent.
- Criminal law reform alone **cannot solve problems** such as delayed trials, police inefficiency and overcrowded prisons.
- Concerns regarding **misuse** of State power and digital surveillance continue to exist.
- Critics argue that renaming and reorganizing provisions alone **cannot** completely transform India's criminal justice system.

### REFORM OR MERE REPLACEMENT: A CRITICAL EVALUATION

The debate surrounding the Bharatiya Nyaya Sanhita, 2023 can broadly be understood from two different perspectives. While some consider it a major reform in India's criminal justice system, others believe that several provisions remain substantially similar to the Indian Penal Code, 1860.<sup>10</sup>

### ARGUMENTS SUPPORTING BNS AS A REFORM:

- **Recognition** of organized crime, terrorism and mob lynching within the criminal code itself.
- **Greater focus** upon technology-driven and digital-age offences.
- **Introduction** of community service reflecting restorative justice principles.
- **Attempt** to remove colonial terminology and outdated legal concepts.
- **Emphasis** upon victim-centric justice and speedy investigation.

### ARGUMENTS SUGGESTING BNS IS MERELY A REPLACEMENT:

- Several IPC provisions **continue** with minor linguistic and structural changes.
- Concerns regarding **broad State powers** and constitutional safeguards still remain.
- Critics argue that renumbering provisions alone **cannot** transform criminal justice.
- Lack of simultaneous police, prison and judicial reforms may **reduce** practical impact.
- Questions regarding **implementation** and **misuse** of powers continue to exist.

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<sup>10</sup> Reform or Repackaging? Analysing the Bharatiya Nyaya Sanhita, INDIAN J. L. & LEGAL RSCH. (2024), <https://www.ijllr.com/post/reform-or-repackaging-analysing-the-bharatiya-nyaya-sanhita-2023> (last visited May 17, 2026).

Therefore, BNS appears to represent both continuity and change. While it undoubtedly introduces important reforms, its true effectiveness will ultimately depend upon implementation, judicial interpretation and protection of constitutional values.

## CONCLUSION AND SUGGESTIONS

The author is of the opinion that the Bharatiya Nyaya Sanhita, 2023 should not be viewed merely as a change in the name of criminal law, but as an important opportunity to modernize India's criminal justice system according to present-day realities.

The author further believes that criminal law must evolve alongside society while maintaining a balance between effective law enforcement and protection of civil liberties. A modern criminal justice system should not only punish offenders, but also promote fairness, accountability and reformatory justice.

In the words of Dr. B. R. Ambedkar, **“Constitutional morality is not a natural sentiment. It has to be cultivated.”**<sup>11</sup> The real success of BNS will therefore depend upon whether the law strengthens constitutional values and public trust while ensuring justice in a rapidly changing society.

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<sup>11</sup> B.R. Ambedkar, Speech in the Constituent Assembly (Nov. 4, 1948), in 7 Constituent Assembly Debates 38 (1948).