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+91 70421 48991
editor@ijlar.com
www.ijlar.com

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Introduction

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Preface

The Indian Journal of Legal Affairs and Research is a testament to our unwavering commitment to excellence in legal scholarship. This volume presents a curated selection of articles that reflect the diverse and dynamic nature of legal studies today. Our contributors, ranging from esteemed legal scholars to emerging academics, bring forward a rich tapestry of insights that address critical legal issues and offer novel contributions to the field. We are grateful to our editorial board, reviewers, and authors for their dedication and hard work, which have made this publication possible. It is our hope that this journal will serve as a valuable resource for researchers, practitioners, and policymakers, and will inspire further inquiry and debate within the legal community.

Description

The Indian Journal of Legal Affairs and Research is an academic journal that publishes peer-reviewed articles on a wide range of legal topics. Each issue is designed to provide a platform for legal scholars, practitioners, and students to share their research findings, theoretical explorations, and practical insights. Our journal covers various branches of law, including but not limited to constitutional law, international law, criminal law, commercial law, human rights, and environmental law. We are dedicated to ensuring that the articles published in our journal adhere to the highest standards of academic rigor and contribute meaningfully to the understanding and development of legal theories and practices.

REFORMING CRIMINAL JUSTICE: A COMPARATIVE STUDY OF IPC, 1860 AND BNS, 2023

AUTHORED BY - SRISHTI SINGH

Abstract

The Indian Penal Code (IPC), enacted in 1860 by the British government, has been a governing force of India's criminal justice system for now more than 160 years. However, with the changing social, political, and technological environment, there was a felt need to modernise and replace the Indian law regime. To address this issue, the government of India introduced Bhartiya Nyaya Sanhita, 2023 (BNS), enriched with Indian values and constitutional principles. This article will focus on an exhaustive comparative analysis of IPC and BNS based on the structure, procedural and material changes.

It focuses on victim- focused provisions and integration of newer crimes like cybercrimes and terrorism. The article also scrutinises the constitutional validity, social- legal dimensions and functional enforceability of BNS compared to the colonial- era IPC, legal and social influence of both the codes, Key provisions and offences of IPC, major offences under BNS, and conclusion.

Introduction

The Indian Penal Code, 1860 (IPC), has been the backbone of India's criminal legal system for more than 160 years. It defined offences and punishment for those who committed offences. This code was created under the guidance of Lord Macaulay, the chairman of the first Law Commission. It was one of the first attempts to codify the substantive criminal law in a colonized state¹. IPC replaced the complex amalgamation of Hindu, Muslims and local customary laws and provided a much simpler and comprehensive criminal code.

¹ <https://www.irejournals.com/formatedpaper/708680.pdf> (2025) (P.8).

IPC has been majorly shaped by English common law, and though it established uniformity and sterilisation in Indian criminal law, it had an underlying colonial purpose to create an imperial domination, not to express hopes for the Indian people. The Britishers have claimed that they are in India and are taking these reforms to civilise Indians, as we are not capable of running ourselves.

IPC has existed for more than 160 years due to its strong foundational structure, and the ability to adapt over time has kept its relevance in changing times. Because of its flexibility, it was always open to amendments, and this covered many modern crimes involving technology. Additionally, the Indian Judiciary has interpreted existing provisions with evolving needs of the society, like the decriminalisation of Section 377.

Although the IPC has emerged as a hardy and constitutive law, its colonial pedigree and inability to adapt to the socio- technological shifts of contemporary India have long demanded reforms.² In the era of the internet, the nature of crimes has become more sophisticated and hence the inadequacies have become more and more evident. The remedies for the crimes, such as crimes against women, cybersecurity, terrorism and organised crime, have either been inadequate or added in piecemeal amendments, which have mostly led to legal uncertainty and procedural delays³.

As time went on, the socio- political scenarios changed, and the IPC started to manifest signs of obsolescence. Critics, including the judiciary and human rights activists has pointed out several lacunae in this code⁴. The ever-evolving nature of crimes needs radical reforms, and its continuous failure to curb the white- collar crimes have casted a Sevier doubts on its effectiveness. Further, IPC always aimed to punish the culprit; it never served as victim friendly code, particularly for women and Children. Apart from this, the language of IPC, more legalistic and English-dominated, was difficult to understand for a typical Indian citizen.

² B.B Pandle, "Revisiting Penal Policy through Bharatiya Nyaya Sanhita", (2024) 66(2) Journal of the Indian Law Institute, 123.

³ Ratanlal and Dhirajlal, the Indian Penal Code, 36th edn, Lexis- Nexis, Gurgaon, 2025, P.8.

⁴ Law Commission of India, Report No. 262: Effective Justice System, 2023, p.10.

Several Law commissions' reports, including the 42nd Law commission of India and various apex courts Judgement like Navtej Singh Johar v. Union of India⁵ and Joseph Shine Vs Union of India⁶ have recognised these concerns and highlighted the need to move ahead from colonial morality and uphold individual rights and autonomy.

Identifying these loopholes, the Indian government introduced three revolutionary legislative bills on August 11, 2023, namely the Bharatiya Nyaya Sanhita, 2023 (BNS), the Bharatiya Nagarik Sanhita (BNSS), and the Bharatiya Sakshya Abhiniyam, 2023 (BSA), which replaced the existing criminal laws.

Bharatiya Nyaya Sanhita: Framework and Reformist Intentions

The introduction of Bharatiya Nyaya Sanhita is seen as a major step towards decolonising India's criminal laws. BNS has tried to move away from colonial tradition and has attempted to establish a more sensitive legal regime.

One of the main features of BNS is that it is victim-centric. It places a greater importance on the protection and rehabilitation of victims. The model seeks to restore justice by restitution and reconciliation, more inclined towards restorative justice in criminal law. This approach is in-line with international legal trends, which oppose punitive actions and advocate for rehabilitation and restorative practices.

The BNS has added several new provisions to deal with the new modes of crimes, such as eco-tourism, cybercrimes, hate speech, etc. It tries to acknowledge the emerging challenges of modern-day crimes and aims to combat these with greater efficacy. Provisions are added for mob lynching, terrorism and organised crimes, a step to acknowledge the requirement of the criminal justice system to meet international security issues and new age threats. It has tried to align the gravity of offences with modern standards, and it also decriminalises some petty crimes, allowing courts to

⁵ Navtej Singh Johar vs. Union of India, AIR 2018 SC (CRI) 1169.

⁶ Joseph Shine vs. Union of India, (2019)3 SCC 39.

focus on serious crimes. It also introduces a new form of punishment in criminal law, which is community service, which was absent from the Indian Penal Code.

Legal and Social Influences on Both Codes

On the one hand, the IPC was created in an era when codification meant simplification for colonial government. And it always focused on rigid definitions, retributive punishments and administrative convenience. The language was legalized and often inaccessible for common public. The British government designed it as a top- down approach. The primary aim was administrative control and a well-structured legal framework to govern this vast landmass. The IPC did not reflect Indian societal values, as it was drafted without consultation with Indians. Social concerns such as women's rights, child protection, and communal harmony were inadequately addressed and hence, reflected a lack of sensitivity for Indians.

Whereas, BNS represents a citizen- centric, rights- based approach. One of the major differences is the simplification of language. It uses gender- neutral terminology and hence tries to reduce ambiguity and misinterpretation. For example, the term lunatic is replaced with person with mental illness, which reflects a more humane and rights- oriented view. BNS marks a shift from colonial legacy to indigenous law-making, aligned with constitutional values such as gender justice, dignity, etc. Furthermore, it also reflects a movement towards decolonising laws and embedding them with human rights principles and local sensibilities.

Key Provisions and Offences of IPC

Offences against the human body were a significant part of the IPC and reflect the importance of safeguarding bodily integrity and life. Section 299- 304 deals with Culpable Homicide and Murder. These provisions are distinguished between intention and knowledge. While Section 299 defines culpable homicide and Section 300 defines murder, Section 302 provides the death penalty or life imprisonment in murder cases. Section 319- 338 deals with Hurt and grievous Hurt. Section 319 defines hurt, while section 320 includes more severe injuries like emasculation, permanent loss of sight or hearing or severe bodily pain. Sections 339 to 348 define wrongful restraint and confinement, which also fall within this category and protect the individual's personal liberty.

Some provisions were also introduced to address the rising concerns related to address rising concerns related to women's safety, like section 304B and 306.

Offences Against Women and Children were also an important part of IPC, like section 375, which deals with rape. This provision has undergone multiple amendments, particularly after the 2012 Delhi gang rape case. After these amendments, the definition of rape now includes penetration of any kind, consent and specific mention of marital rape for minors. Section 354-354D deals with Sexual Harassment and Assault. These sections criminalize actions like outraging modesty (Section 354), Sexual harassment (354A), voyeurism (354C) and stalking (354D), aimed to provide legal remedies for reported offences in public and workplace settings. Section 498A, which was introduced in 1983, deals with Cruelty by Husband or Relatives. This provision protects women from domestic violence, emotional abuse and dowry-related harassment. IPC also lays laws for the protection of Children, e.g., kidnapping of minors under Section 361. Later, some special laws like the POCSO Act supplement its scope. However, offences like the procurement of minor girls, i.e., section 366A, remain relevant within IPC.

Offences Against Property, like Theft, Extortion, and Robbery, i.e., sections 378-392. Section 378 defines theft and extortion (Section 383) and robbery, i.e., defined under Section 390. Dacoity is defined under Section 395, a unique provision that requires five or more persons committing robbery and hence, reflects the IPC's intention in defining group crimes. Sections 405 and 415 deal with Cheating and Criminal Breach of Trust. These cover fraudulent conduct and breach of contractual relationships, which are considered white-collar crimes. Sections 425,441, addresses Mischief and Criminal Trespass. These sections try to address the problems, such as damage to property.

Offences Against the State and Public Order, this section deals with offences like Waging war against the Government, i.e., section 121. It is a serious offence that even attracts the death penalty or life imprisonment. Another offence is Sedition (Section 124A). This provision also has historical relevance for curbing violence in colonial times; it remains controversial, and now, in contemporary times, it has been challenged in courts for its scope for potential misuse. Unlawful

Assembly and Rioting, i.e., sections 141 to 148. This section aims to curb group violence and disturbances to public peace.

Offences Relating to Religion, Deliberate acts to outrage religious sentiments, Section 295A, is a crucial section in preventing communal disharmony. Sections 296 to 298. This section covers offences like disturbing religious assemblies and harmful words with dishonest intention to wound religious feelings.

Offences Relating to Documents, Fraud and Forgery, Sections 463- 477A, deal with various offences like forging documents, etc. Forging documents, impersonation and falsification of records are punishable with imprisonment up to life in certain circumstances. Sections 231- 263A deal with counterfeiting. These covers coinage, government stamps and currency counterfeiting; these crimes also affect national economic integrity.

Criminal Conspiracy and Attempts- Criminal Conspiracy is covered under sections 120A to 120B. Later, these provisions address crimes committed in collusion, regardless of their completion or not. Section 511 deals with attempt. Even if the completion of the crime is not successful, then also those crimes are still punishable.

Major Offences Under the Bharatiya Nyaya Sanhita

Offences Against the Human Body, the BNS follows the traditional classification of offences against life and the human body, but it tries to modernize the terminology and structure. Section 101 of BNS mirrors Section 302 of IPC; it also retains the punishment of life imprisonment or death. The definition now emphasizes the intent and includes broader interpretations to guide. The concept of terrorist acts resulting in death and it has been more clearly defined under section 113, showing a shift toward addressing the threats. Section 117 of BNS deals with Hurt and Grievous Hurt. Section 118 covers grievous hurt.

Offences Against Women and Children, BNS retains and strengthens the gender specific protection, but it also incorporates child- protection laws. Section 63 defines rape with consent –

based language, and Section 64 increases punishment for gang rape and custodial rape. It tries to be more closely aligned with post- 2013 jurisprudence and also uses gender-sensitive language. Sections 73 to 75 deal with offences such as assault, intention to outrage modesty, stalking and voyeurism, and it also incorporates digital harassment. BNS coordinates with the provisions of POCSO as it addresses child sexual abuse under a unified legislative framework.

Offence Against Property, Sections 303 to 308, parallel with IPC's structure but introduce clearer thresholds for dacoity and also include punishment for cyber- enabled theft. Offences such as cheating and Criminal Breach of Trust also remain similar in construction, but also have additional accounts for digital fraud and contractual misuse, which reflects the modern economic focus. BNS also includes provisions that enhance penalties when damage is caused to digital systems.

Offences Against the State and Public Order, BNS tries to address current social – political realities, hence BNS modifies and, in some cases, it removes controversial colonial- rule offences such as –

- Removal of Sedition- Section 124A of IPC, is removed that deals with sedition, has been omitted. Rather, Section 150 of BNS criminalises the acts endangering the sovereignty, unity and integrity of India; it makes a major philosophical shift.
- Terrorism and Organised Crime- BNS has tried to emphasized on Organized crimes, mob violence and terrorist financing with specific provisions offering harsher penalties.

Offences Relating to Forgery, Counterfeiting, and Cybercrime, it can be considered as one of the most progressive areas of BNS that tries to include these technology-related offences.

- Forgery and Counterfeit- BNS parallels the section of IPC provisions related to forgery (sections 336-341). BNS introduces strong penalties for counterfeit digital documents, e-records and biometric fraud.⁷
- Cyber Offences- BNS incorporates cyber- enabled frauds and hacking under provisions related to dishonesty, cheating and reputational harm, offering legal response to modern societal threats.

⁷ Ratanlal and Dhirajlal, The Bharatiya Nyaya Sanhita: Commentary, supra n. 2,pp, 410-418.

Criminal Conspiracy and Attempt, The BNS defines the criminal conspiracy in section 56, which includes the use of digital communication, which makes it more responsive to modern criminal plans. Further, section 63 of BNS attempts to commit any punishable offence and maintains IPC's stance, but it offers clarity on degrees of culpability and intent.

While IPC is not codified in IPC, but BNS brings in the provisions to tackle mob- based violence and makes it punishable under collective criminal liability. Several minor offences now include community service, and it tries to make a departure from purely retributive models. Further, BNS is still largely binary, but BNS introduces more neutral terms compared to IPC in several sections.

Comparative Analysis of Offences and Punishments

The transformation from the Indian Penal Code (IPC), 1860, to Bharatiya Nyaya Sanhita (BNS), 2023, has marked a historic shift in the Indian criminal legal system. Under the IPC, the types of punishment for the offences mirror the colonial mindset that prevailed in the 19th century. The focus was greatly on maintaining law and order from a colonial-centric perspective, and it often ignored the indigenous legal ethos and social realities of post- independence India.

Further, many offences, such as sedition (section 124A of IPC), adultery (section 497) and unnatural offences (section 377) were framed according to the Britishers' terms and carried several punishments that were greatly considered outdated and disproportionate in the modern Indian society.⁸

However, the BNS represents a reform- oriented and people-centric law code. It aims to align the punishment of crimes with current social values, and its goal is to promote restorative justice. One of the main areas of change is the deletion or modification of obsolete offences, including sedition and adultery, which were either misused or now they don't parallel with the constitutional framework.

⁸ K. D. Gaur, Textbook on the Indian Penal Code, 8th edition., Universal Law Publishing, 2021, p. 113.

Moreover, the BNS adds newer categories of crimes that were either inadequately addressed or are completely absent in the IPC. These offences are related to mob lynching, terrorism and crimes involving children and women, with specific punishment based on the gravity of circumstances. Punishment structures of BNS are also more structured, with specific mention of minimum and maximum sentences, victim compensation, and non-custodial measures such as community service for minor infractions.

Under BNS, punishments have been aligned with restorative and reformatory goals. For example, petty crimes now attract community service or monetary penalties instead of imprisonment. Structured Sentencing Guidelines are introduced in many sections, reducing arbitrariness. It emphasises victim-oriented justice.

Both codes share a similar foundation of crime classification; the BNS introduces the laws that ensure relevance, equity and responsiveness in sentencing.

The investigative and trial procedures under the Indian Penal Code are guided by many procedural laws, like the Criminal Procedure Code (CrPC), which sets a framework for the investigation and trial of criminal offences. Rather, IPC itself does not provide direct guidance on these procedures. Whereas the Bharatiya Nyaya Sanhita (BNS), is designed as an alternative to the Indian Penal Code (IPC), introduces provisions that aim to streamline and modernize the process. It is designed to align with today's needs while ensuring fairness and protecting fundamental rights.

The key difference between the IPC and the BNS lies in the specialized approach adopted in the latter. While the IPC system is generalized and focuses on a uniform process for all types of crime, and the BNS acknowledges the need for specialized agency to tackle modern crimes. It also sheds light on the technological enforcement, that did enhance the speed and accuracy of investigations.

Although the BNS includes provisions for victim protection, there is a need to establish a more comprehensive victim-supported system, particularly for more marginalized groups. This includes psychological support, witness protection programs, and access to legal aid, among others.

Expanding victim protection frameworks will ensure that victims feel safe and supported throughout the legal process.

Furthermore, the BNS already emphasizes a shift towards social justice, but its implementation could be further enhanced by integrating more socio- economic factors into the sentencing process. Courts may consider factors like poverty, education and mental health while determining the sentences, ensuring justice is not only punitive but also rehabilitative.

Conclusion

The introduction of the Bharatiya Nyaya Sanhita signifies a shift in India's criminal justice system. While the Indian Penal Code laid the foundational doctrine of criminal law, rooted in common law. It focuses largely on the doctrine of an eye for an eye. The BNS, in contrast, it builds on these foundations but reorients the purpose of punishment. One of the most transformative aspects of the BNS is its emphasis on restorative and rehabilitative justice. By including community service, victim compensation and non- custodial measures, the new code reflects a deep understanding that not all crimes require imprisonment. Furthermore, the integration of technology into the investigative and judicial processes highlights a clear commitment to efficiency, accessibility, and modernisation in the legal system.

Furthermore, the BNS does not simply update the Indian Penal Code, but it reimagines the role of criminal law in a rapidly evolving society. It acknowledges that true justice extends beyond the courtroom, it aims to balance accountability with compassion and social protection with human dignity. As India adopts this reformatory legal system, it sets a progressive precedent for a justice system that is more adaptive, equitable, and future-ready.