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# Offences against the State: Indian Penal Code, 1860 vs. Bharatiya Nyaya Sanhita, 2023

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## ABSTRACT

*The Parliament of India brought in the new Bharatiya Nyaya Sanhita, 2023 (BNS) in the place of Indian Penal Code, 1860 (IPC). Along with BNS, Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) and Bharatiya Sakshya Adhiniyam, 2023 (BSA) were also passed. The Criminal Procedure Code, 1973 has been replaced by BNSS and the Indian Evidence Act, 1872 has been replaced by BSA.*

*The notification of the BNS brought to a grinding halt, the more than 160-year-old IPC. The British time IPC was in force even after Indian independence because our Constitution has continued in force all the existing laws at the commencement of the Constitution till, they are amended or repealed by competent legislature and that continued IPC as well. The word 'Indian' in IPC has been replaced by Bharatiya and instead of 'Penal,' Nyaya meaning Justice has been preferred in the title. But throughout the Sanhita ie the Code, in hundreds of places, the word India is but retained. Section 1 of BNS has the word 'India' 15 times. The object of this paper is to analyse critically the provisions of IPC and BNS on offences against the state. There are several other terrorism and defence of India related offences against the state in other laws in India. But this study confines itself to IPC and BNS. Security of the nation is a supreme value and so the offences against the state will have to be suppressed with an iron hand. Further S. 124A of IPC on sedition was very controversial due to its conflict with the right to free speech and this study attempts to inquire into the change in this regard.*

**Keywords:** IPC, BNS, Sedition, PIL, Free speech, War.

## I. INTRODUCTION

On 1st July 2025 Government of India conducted a programme in Delhi- 'A Golden Year of Trust in the Justice System' to mark the one-year completion of the three new criminal laws that came into force on 1<sup>st</sup> July 2024. Hon'ble Minister expressed that the criminal justice system is entering a new era instilling a strong trust in the people of India in prompt justice.<sup>2</sup> The Parliament of India brought in the new Bharatiya Nyaya Sanhita, 2023 (hereinafter BNS) in the

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<sup>2</sup> <https://www.pib.gov.in/PressReleasePage.aspx?PRID=2141356> last visited July 7, 2025

place of Indian Penal Code, 1860 (hereinafter IPC). Along with BNS, Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter BNSS) and Bharatiya Sakshya Adhiniyam, 2023 (hereinafter BSA) were also passed. The Criminal Procedure Code, 1973 has been replaced by BNSS and the Indian Evidence Act, 1872 has been replaced by BSA<sup>3</sup>.

The notification of the BNS brought to a grinding halt, the more than 160-year-old IPC. Being the general and substantive penal law of India for such a long time, IPC had become a household term. The British time IPC was in force even after Indian independence because our Constitution has continued in force all the existing laws at the commencement of the Constitution till they are amended or repealed by competent legislature and that continued IPC as well.<sup>4</sup> The word 'Indian' in IPC has been replaced by Bharatiya and instead of 'Penal,' Nyaya meaning Justice has been preferred in the title. But throughout the Sanhita ie the Code, in hundreds of places, the word India is but retained. Section 1 of BNS has the word 'India' 15 times. Interestingly, S. 18 of IPC defined India as territory of India excluding the state of Jammu and Kashmir. With the abrogation of Article 370, integrating Jammu and Kashmir into India, the laws have full force throughout India and therefore this S.18 of IPC defining India has been dropped in BNS. The object of this paper is to analyse critically the provisions of IPC and BNS on offences against the state. There are several other terrorism and defence of India related offences against the state in other laws in India. But this study confines itself to IPC and BNS. Security of the nation is a supreme value and so the offences against the state will have to be suppressed with an iron hand. Further S. 124A of IPC on sedition was very controversial due to its conflict with the right to free speech and this study attempts to inquire into the change in this regard.

## II. NOTIFICATION OF BNS

The new criminal laws received Presidential assent on 25<sup>th</sup> December 2023 and came into force on 1<sup>st</sup> July 2024.<sup>5</sup> On 16<sup>th</sup> July Government of India notified in the gazette under section 8 of the General Clauses Act, 1897 that any reference in any law, ordinance, rules etc to IPC, BNSS and BSA will be read as reference to BNS, BNSS and BSA respectively.<sup>6</sup> BNS was notified to have commencement from 1st July, 2024 with one little exception- S.106 (2) has been kept in abeyance and the rest of BNS has come into force. S.304A IPC punished a person for causing death by a rash and negligent act. This was a very simple section imposing a punishment of two

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<sup>3</sup> It is pertinent to note that in *Manpreet Kaur v. State of Punjab*, 2024 SCC OnLine P&H 7800 the HC called for simple abbreviations for the new criminal laws in the same way as adopted herein.

<sup>4</sup> INDIA CONST art 372

<sup>5</sup> Notification no. S.O. 850(E) dated 23.02.2024

<sup>6</sup> <https://bprd.nic.in/uploads/pdf/255467.pdf> last visited July 20, 2025

years imprisonment, or fine or both in case a person is found guilty under the section. Corresponding to S. 304A, S.106 of BNS punishes causing death by rash and negligent act. The ingredients of the offense have been kept same, but the punishment has been enhanced to five years imprisonment, which may be simple or rigorous and fine. But what is more interesting is the registered medical practitioners who caused death by negligence while performing a medical procedure, will be subjected to only two years imprisonment and fine. Thus S.106 carves out an exception in the case of registered medical practitioners. S.106 (2) deals with hit and run cases of vehicles. The driver who negligently hits somebody and flees from the place without informing the police, will be punished with ten years imprisonment and fine if death results. Due to agitations of truck drivers and other concerned persons, government has put this on hold, while bringing the rest of BNS into force<sup>7</sup>.

### III. CHALLENGES AGAINST THE NEW CRIMINAL LAWS

IPC, a British gift to India, is based on colonial jurisprudence. Several amendments were effected to it to suit modern India. Fine amounts are ridiculously low in IPC. The 42<sup>nd</sup> Report of the Law Commission of India recommended substantive revision of IPC in 1971 but nothing concrete happened by way of amendment. A chapter on violation of personal privacy was even recommended to be included.<sup>8</sup>

The new criminal laws have been challenged in various High Courts and the SC on several grounds. The Hindi/Sanskrit titles were challenged as violating A. 348 (1)(b) of the Constitution that promises that the text of laws by Parliament will be in English. Kerala HC dismissed a Public Interest Litigation(PIL) objecting to Hindi title on the ground that the text was in English.<sup>9</sup> Inadequate discussion in the Parliament before passing these laws and passing when many of the opposition members were suspended are also grounds on which the challenges are pending before courts. Recently the SC has asked the Chennai HC to expedite and decide the challenge to these laws.<sup>10</sup>

#### (A) Offences against the State

In IPC the chapters on specific offences start with offences against the state- Chapter VI

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<sup>7</sup> Bose, S. (no date) *BNS hit-and-run clause put on hold: Nagpur News - Times of India, The Times of India*. Available at: <https://timesofindia.indiatimes.com/city/nagpur/bns-hit-and-run-clause-put-on-hold/articleshow/111417316.cms> (Accessed: 15 September 2025).

<sup>8</sup> <https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2022/08/2022082456.pdf> last visited Oct 7, 2024

<sup>9</sup> P.V. Jeevesh v. Union of India & Ors., Neutral Citation: 2024:KER:63693

<sup>10</sup> Choudhury, R. (no date) *Supreme Court tells Madras HC to expeditiously decide challenge to New Criminal Laws, Bar and Bench - Indian Legal news*. Available at: <https://www.barandbench.com/news/litigation/supreme-court-tells-madras-hc-to-expeditiously-decide-challenge-to-new-criminal-laws> (Accessed: 15 September 2025).

followed by offences relating to the Army, Navy, and Air Force and then by offences against Public Tranquillity. In the scheme and order, offences against state and public interest like those against public servants, elections, public justice, coin and government stamps, public health, safety, and such others precede the chapters on offences against private persons. BNS follows a completely different order of chapters with a few new chapters like Chapter V Offences against Woman and Child. Chapters on specific offences in BNS begin with Chapter V on woman and child followed by offences affecting the human body. Offences against the State take the next place in Chapter VII of BNS. Ss 147 to 158 deal with the offences against the State and they correspond to the 12 sections of IPC-Ss. 121 to 130, including Ss 121A and 124A. The order/sequence, ingredients of offences, explanation, punishments, illustrations remain unchanged except that S. 124A on Sedition is dropped and instead, S. 152 -Act endangering sovereignty, unity and integrity of India is inserted. Further the words of IPC- Asiatic Alliance and Power have been replaced with States at Peace with India. The comparison briefly can be seen below-

<b>Chapter VI , IPC section numbers</b>	<b>Chapter VII, BNS section numbers</b>	<b>Offence</b>	<b>Punishment</b>
121	147	Waging/attempting/abetting to wage a war against government of India	Death, or imprisonment for life or fine
121A	148	Conspiracy to commit offences punishable by S.121/S.147	Imprisonment for life or simple or rigorous imprisonment upto 10 yrs and fine
122	149	Collecting arms etc with intention of waging war against government of Indis	Imprisonment for life or simple or rigorous imprisonment upto 10 yrs and fine

123	150	Concealing with intent to facilitate design to wage war	Simple or rigorous imprisonment upto 10 yrs and fine
124	151	Assaulting President, Governor with intent to compel or restrain exercise of any lawful power	Simple or rigorous imprisonment upto 7 yrs plus fine may be added or with fine
124A -Sedition	-	Whoever, by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, the Government established by law in India, shall be punished with imprisonment for life, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.	Imprisonment for life to which fine may be added, or imprisonment which may extend to 3 yrs to which fine may be added or with fine
-	152 - Act endangering sovereignty, unity and integrity of India	By words, signs etc excites or attempts to excite secession, armed rebellion, subversive activities, separatist activities, or endangers unity and integrity of India or indulges or commits such act	Imprisonment for life or with imprisonment upto 7yrs and fine
125 Waging war against any	153-Waging war against		Imprisonment for life to which fine

Asiatic Power in alliance with the Government of India	Government of any foreign state at peace with government of India		may be added, or simple or rigorous imprisonment upto 7yrs to which fine may be added, or with fine
126- Committing depredation on territories of Power at peace with the Government of India	154- Committing depredation on territories of foreign state at peace with the Government of India		Simple or rigorous imprisonment upto 7 yrs and fine and forfeiture of property
127- Receiving property taken by war on depredation mentioned in sections 125, 126	155- Receiving property taken by war on depredation mentioned in sections 153, 154		Simple or rigorous imprisonment upto 7 yrs and fine and forfeiture of property
128	156	Public servant voluntarily allowing prisoner of state or war to escape	Imprisonment for life or simple or rigorous imprisonment upto 10 yrs and fine
129	157	Public servant negligently suffering such prisoner to escape	Simple imprisonment of upto 3 yrs and fine

130	158	Aiding the escape of, rescuing or harbouring such prisoner	Imprisonment for life or simple or rigorous imprisonment upto 10 yrs and fine
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### **(B) Sedition**

Sedition was defined by Fitzgerald J. in R v Sullivan<sup>11</sup> as a crime against society and close to treason. IPC provision relating to sedition has always been contentious, more particularly in independent Bharat. Constitution of India's guarantee of free speech and expression to every citizen<sup>12</sup> was seen to be offended by the offence of sedition. The political misuse of the provision also assumed to the provision, controversial importance.

Sedition sought to punish bringing hatred, contempt or disaffection against the government established by law in India. The offence could be committed by spoken or written words, signs or by visual representation. Attempt to bring the aforesaid against the government was also treated as offence. Government established by law in India included the governments of India, states and union territories.<sup>13</sup> The section has three explanations –the first said what disaffection was. Disaffection included disloyalty and all feelings of enmity. The second and third, on the condition that, comments should not be exciting or attempting to excite hatred, contempt or disaffection allowed disapprobation of government measures to get them altered or disapprobation of the administrative or other action of the government and explained that they will not constitute offence. This offence seeks to protect the safety and stability of the state.

In 1870 a provision S. 124A Exciting disaffection was inserted in IPC ten years after IPC was brought into force. An amendment in 1898 replaced this section with S. 124A Sedition that was retained as such till BNS. It is folklore that Balagangadar Tilak and Mahatma Gandhi were punished for sedition.

Constitutional validity of S. 124A has been challenged as it crosses swords with the guarantee of free speech. The governments used the offence to suppress opposition and criticism. Journalists, activists and cartoonists were targeted. The SC upheld the validity of S. 124A in

<sup>11</sup> (1868) 11 Cox C.C. 44 at p. 45 quoted by SC in Kedarnath, infra n.13

<sup>12</sup> INDIA CONST art 19 (1)(a)

<sup>13</sup> See IPC S.124A



Kedarnath v State of Bihar<sup>14</sup> but gave a restricted interpretation to prevent its misuse. The offence was limited to acts with intent and inclination to create disorder, disruption, or violence. In Shreya Singhal v UOI<sup>15</sup> SC reiterated the restricted interpretation of S. 124A to protect free speech.

In a PIL filed by a retired army general, S.G. Vombatkare, SC had in 2022 suspended the operation of S. 124A. The petitioner highlighted the misuse and contended that sedition had no place in a constitutional democracy. Government of India assured that the provision will be relooked bearing in mind the misuse and human rights issues in the backdrop of the sovereignty and integrity of the nation in the overhaul of IPC. SC stayed S.124A with an order suspending all the pending trials and entitling to bail all those who are in jail on charges of sedition.<sup>16</sup>

### **(C)S. 152, BNS**

Maintaining the same sequence and order of IPC chapter on Offences against the state, BNS has deleted sedition and in its place has inserted S. 152 that punishes acts endangering sovereignty, unity, and integrity of India. This seems to be more draconian on a few counts- punishment is severer, more acts are captured, vague terms are employed. Excitation or attempt to excite secession or armed rebellion or subversive activities, separatist activities or endangers sovereignty or unity and integrity of India fall within the section to constitute the offence. Further to indulge or commit such acts will also come under the scope of the section. Life imprisonment is retained as a punishment as was in sedition. But imprisonment may be upto 7 years unlike 3 years in the earlier S. 124A. Recently a professor charged under S. 152 in the matter of his social media post on Pahalgam terror attack has been granted bail by the SC.<sup>17</sup>

The one explanation appended to S. 152 is like explanation 2 and 3 of the earlier S. 124A. Comments that disapprove measures, administrative and other actions of the government with a view to lawfully alter them and without exciting or attempt to excite the activities listed in S. 152 are spared and kept out of the defined offence. Maintaining the delicate balance between non- negotiable security of state and the democratic free speech is no easy task.

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<sup>14</sup> AIR 1962 SC 955

<sup>15</sup> AIR 2015 SC 1523

<sup>16</sup> S G Vombatkere v UOI, 2022 Livelaw (SC)470

<sup>17</sup> Mohammad Amir Ahmad @ Ali Khan vs State of Haryana on 21 May, 2025