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# Reimagining Justice: A Critical Analysis of the Bharatiya Nyaya Sanhita, 2023 and its Departure from the Indian Penal Code

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## ABSTRACT

*The Bharatiya Nyaya Sanhita [BNS], 2023, Represents a Significant Reformation of India's Criminal Justice System as Initiated by the Government of the India. This Paper Critically Examines the BNS in Contrast to the Indian Penal Code [IPC], Highlighting its Philosophical Foundations, Departures from Existing Legal Frameworks, and its Implications for Social Justice. By Analysing the Proposed Changes, We Posit that While the BNS Aims to Create a More Just and Responsive Legal System, Certain Aspects May Undermine These Objectives. the Paper Provides An Overview of Key Components of BNS, Evaluates Them Through a Lens of Efficiency, Equity, and Human Rights and Concludes with Recommendations for Enhancing its Effectiveness. the Enactment of the Bharatiya Nyaya Sanhita 2023, Marks a Significant Milestone in India's Legislative History, After More Than 160 Years the Paper Also Addresses the Criticisms and Challenges in the Implementation of the New Law.*

## I. INTRODUCTION

The Indian Penal Code [IPC], enacted in 1860, Has Long Been Foundational to the Country's Criminal Justice System. Despite its Historical Significance, Critiques Have Emerged Regarding its Relevance in Rapidly Evolving Socio-Political Landscape. in Response, the Bharatiya Nyaya Sanhita, 2023 Has Been Introduced, Intending to Overhaul the Existing Penal Framework. India's Criminal Justice System Has Long Operated Under Colonial-Era Legislation, Primarily the Indian Penal Code [IPC] 1860. with Societal Evolution, Technological Advancement and Changing Notions of Justice, the IPC Grew Increasingly Outdated. in Response, the Indian Government Enacted the Bharatiya Nyaya Sanhita [BNS] 2023, Effective from July 1, 2024. the BNS Seeks to Shift from a Punitive to a Reformative and Victims-Centered Approach. This Paper Critically Explores How the BNS Diverges from the IPC, What Reforms It Introduces and the Potential Implications for Justice Delivery in India.

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## II. KEY FEATURES OF BHARATIYA NYAYA SANHITA, 2023

### 1. Philosophical Foundation

The BNS Emphasizes a Restorative Justice Model, Shifting Focus from Punitive Measures to Rehabilitation and Reintegration of Offenders. This Approach Aligns with Modern Criminal Justice Theories Advocating for Healing and Social Reintegration, Indicating a Departure from the Adversarial Nature of the IPC.

### 2. Reformation of Offences

The BNS Categorizes Criminal Offences into More Explicit Classifications, Thereby Enhancing Clarity and Reducing Ambiguities Present in the IPC. Notably, It Distinguishes Between Serious and Minor Offences, Assigning Them Different Procedural Mechanisms. This Reclassifications Aims to Streamline Judicial Processes and Reduce the Workload on Courts.

### 3. Gender Sensitivity and Inclusivity

The BNS Significantly Emphasizes Gender-Sensitive Measures, Introducing Enhanced Definitions of Crimes Against Women and Marginalized Communities. This Reimagining Acknowledge Historical Biases and Seeks to Ensure that Justice Is Accessible and Equitable Across Gender and Socio-Economic Spectra.

### 4. Technological Integration

In the Digital Age, the BNS Introduces Provisions Addressing Cybercrime and Digital Evidence, a Response to Rising Technological Crimes that the IPC Inadequately Addresses. This Integration Signifies a Progressive Step Towards Adapting Legal Frameworks to Meet Contemporary Challenges.

## III. COMPARATIVE TABLE: IPC SECTIONS VS BNS CLAUSES

IPC SECTIONS	IPC PROVISIONS	BNS CLAUSE	BNS PROVISIONS	KEY CHANGES
Section 1	Title And Extent of Operation of the Code	Clause 1	Short Title, Commencement And Applications	Terminology Updated, 'Code' replaced with 'Sanhita' to Reflect indigenous Nomenclature.

Section 2	Punishment of offence Committed within India	Clause 1 [3]	Short Title, Commencement and Applications	Consolidated Under Clause 1 with Updated Language for Clarity
Section 124 A	Sedition	Repealed	N/A	The Colonial-Era Sedition Law Has Been Repealed in the BNS
Section 302	Punishment for Murder	Clause 101	Punishment for Murder	Provisions Remains Largely Similar; However, Languages Has Been Modernized for Clarity
Section 375	Rape	Clause 63	Sexual offences	Definition Expanded to Be More inclusive And Gender Neutral
Section 377	Unnatural offences	Repealed	N/A	Section Decriminalized to Align with Contemporary Views on Consensual Relationships
Section 499	Defamation	Clause 354	Defamation	Provisions Updated to Balance Freedom of Speech with Protection Against Defamation
Section 509	Word, Gesture or Act intended to insult Modesty of Women	Clause 69	Sexual Harassment	Languages Made Gender Neutral to Protect all individuals from Harassment
New Provisions	N/A	Clause 105	Cybercrimes	Reflecting Cybercrimes
New Provisions	N/A	Clause 106	Organized Crime	Crime with Stringed Penalties to Combat Modern Criminal

#### **IV. INTRODUCTION OF NEW OFFENCES**

The BNS introduces several new offences to address contemporary challenges and emerging forms of crime. This section will analyze some of these key additions.

**Terrorism:** Recognizing the growing threat of terrorism, the BNS introduces a comprehensive definition of terrorism, encompassing a wide range of acts intended to threaten the unity, integrity, security, or sovereignty of India.

**BNS (Section 113):** Whoever, with intent to threaten the unity, integrity, security, or sovereignty of India or to strike terror in the people or any section of the people, does any act...

This provision aims to align Indian law with international conventions on terrorism and provide a more robust legal framework for combating terrorist activities. However, concerns have been raised about the potential for misuse of this broad definition to target political opponents or suppress dissent. Safeguards are needed to ensure that the law is applied fairly and consistently, with due regard to fundamental rights and freedoms.

**Organized Crime:** the BNS introduces new provisions to address organized crime, recognizing its detrimental impact on society and the economy.

**BNS (Section 111):** Whoever, being a member of an organised crime syndicate, or on behalf of such syndicate, undertakes any unlawful activity, including extortion, land grabbing, contract killing, economic offences, cyber-crimes, and drug trafficking...

This provision aims to target the leaders and members of organized crime syndicates, punishing them for their involvement in unlawful activities. the definition of "organized crime syndicate" is broad and encompasses a wide range of criminal activities, potentially leading to concerns about overreach and abuse.

**Mob Lynching:** Recognizing the growing incidence of mob lynching, the BNS criminalizes this heinous act, providing for enhanced punishment for those involved.

**BNS (Section 103):** When a group of five or more persons acting in concert commit murder on the ground of race, caste, community, sex, place of birth... each member of such group shall be punished with imprisonment for life or with death if such act was committed with premeditation or planning.

#### **V. MODIFICATIONS IN SENTENCING STRUCTURES**

BNS introduces several modifications to the sentencing structures for various offences,

potentially impacting deterrence, rehabilitation, and the overall fairness of the criminal justice system.

- **Enhanced Punishment for Heinous Crimes:** the BNS provides for enhanced punishment for certain heinous crimes, such as terrorism, organized crime, and mob lynching, reflecting a societal demand for stricter penalties for these offences. This could involve increasing the maximum sentence, introducing mandatory minimum sentences, or expanding the scope of the death penalty.
- **Focus on Proportionality:** While enhancing punishment for certain crimes, the BNS also seeks to ensure proportionality in sentencing, aligning the punishment with the severity of the offence and the culpability of the offender. This could involve reducing the sentences for certain less serious offences or providing for greater discretion in sentencing to allow for individual circumstances to be taken into account.
- **Consideration of Victim Impact:** the BNS may incorporate provisions for considering the impact of the crime on the victim and their family when determining the appropriate sentence. This could involve allowing victim impact statements to be presented during sentencing hearings or providing for restitution to the victim as part of the sentence.
- **Emphasis on Rehabilitation:** the BNS may place greater emphasis on rehabilitation, providing for alternative sentencing options such as community service, probation, and restorative justice programs. This could involve diverting offenders from the formal criminal justice system and providing them with opportunities to address the underlying causes of their offending behavior.
- **Abolition or Restriction of the Death Penalty:** the BNS could potentially revisit the application and scope of the death penalty, aligning with global trends towards abolition or restriction. This could involve abolishing the death penalty altogether or limiting its application to the rarest of rare cases.

## **VI. IMPACT ON VULNERABLE SECTIONS OF SOCIETY**

The BNS has the potential to disproportionately impact vulnerable sections of society, including marginalized communities, religious minorities, and Dalits.

- **Potential for Discriminatory Enforcement:** the ambiguous definitions of offenses such as “sedition” and “organized crime” could be used to target individuals and groups

based on their caste, religion, or political affiliation. the lack of clear procedural safeguards could further exacerbate the risk of discriminatory enforcement.

- **Impact on Freedom of Expression:** the provisions on sedition and unlawful assembly could be used to suppress dissent and restrict the freedom of expression of marginalized communities. This could further marginalize these communities and silence their voices.
- **Access to Justice:** the BNS's complexities create additional barriers to access to justice for vulnerable sections of society, who may lack the resources to navigate the legal system. the lack of legal awareness and the high cost of legal representation further disadvantage these communities.

## **VII. CONCERNS REGARDING PROCEDURAL ASPECTS AND DEFINITIONS**

Beyond specific provisions, the BNS raises concerns regarding procedural aspects and definitional clarity:

- **Shifting of Section Numbers:** the renumbering of sections creates confusion and disrupts the existing legal framework. This necessitates a comprehensive retraining of lawyers, judges, and law enforcement officials, adding to the burden on the already strained justice system.
- **Ambiguous Definitions:** Several key terms in the BNS, such as “endangering,” “organized crime,” and “mob,” remain vaguely defined, leading to potential inconsistencies in interpretation and application. This ambiguity could be exploited by law enforcement agencies to target individuals and groups based on subjective criteria.
- **Lack of Clarity on Procedural Safeguards:** the BNS does not adequately address procedural safeguards to protect the rights of the accused, particularly in cases involving organized crime and terrorism. This lack of clarity could lead to arbitrary arrests, detentions, and violations of due process rights.

## **VIII. ORGANIZED CRIME (NEW PROVISION): STRENGTHENING THE STATE'S ARSENAL OR EXPANDING ITS REACH?**

- The BNS introduces a new chapter on organized crime, recognizing the growing threat posed by criminal syndicates and their activities. This provision aims to address various forms of organized crime, including extortion, kidnapping, contract killing, and economic offenses.

- **Addressing a Growing Threat:** the inclusion of a specific provision on organized crime is a welcome response to the increasing sophistication and reach of criminal syndicates in India. This provision is intended to provide law enforcement agencies with the necessary tools to effectively combat organized crime.
- **Broad Definition:** the definition of "organized crime" is broad and potentially encompassing, raising concerns about its potential for misuse. the BNS defines "organized crime" as any continuing unlawful activity, either individually or collectively, conducted by any person or group of persons or any syndicate or gang, by use of violence or threat of violence or intimidation or coercion or any other unlawful means, with the objective of gaining pecuniary benefits, or gaining undue economic or other advantage for himself or any other person or promoting insurgency.
- **Potential for Abuse:** Critics argue that the broad definition of organized crime could be used to target legitimate protests and social movements, particularly those that involve disruptive tactics or economic boycotts. the potential for misuse is heightened by the BNS's provisions on interception of communications and the admissibility of illegally obtained evidence in organized crime cases.
- **Impact on Civil Liberties:** the anti-organized crime provisions often grant law enforcement agencies enhanced powers of investigation, arrest, and detention, raising concerns about potential violations of civil liberties and due process rights. the BNS mandates a minimum sentence of five years imprisonment and a maximum sentence of death for organized crime, raising concerns about the proportionality of punishment.
- **Overlap with Existing Laws:** the BNS's provisions on organized crime overlap with existing laws, such as the Unlawful Activities (Prevention) Act (UAPA) and various state-level anti-organized crime laws. This overlap creates confusion and raises concerns about the potential for double jeopardy.

## **IX. CONCLUSIONS**

The Bharatiya Nyaya Sanhita, 2023, Embodies a Transformative Vision for India's Criminal Justice, It Signifies along Awaited Decolonization of India Criminal Law. While It Attempts to Address Modern Societal Needs with a Reformative Lens, its Success Depends Heavily on Robust Implementation, Capacity Building, and Public Awareness. As India Transitions into This New Legal Era, Continues Review and Refinement of BNS Will Be Essential to Upload Justice and Constitution Morality. Moving Forward, It Will Be Essential for Lawmakers,



Legal Practitioners and Civil Society to Actively Engage in Dialogue, Ensuring that the Reimagined Justice Framework Fulfills its Promise of Equity and Social Justice for all Citizens. However, a Cortical Analysis Reveals that the BNS, While Ambitious in Intent Is Riddled with Contradictions in Execution.

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**X. REFERENCES**

- Bharatiya Nyaya Sanhita, 2023
- Indian Penal Code, 1860
- Law Commission of India, Reports on Criminal Justice Reform
- SC Agrawala, India Penal Code: Historical Perspective [2011]
- Upendra Baxi, Law Andc the Cololnial State [2000]

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