

## HARMONIZING LEGAL JURISDICTIONS: RELEVANCE AND APPLICABILITY OF INDIAN PENAL CODE (IPC) AND BHARATIYA NYAYA SANHITA (BNS)

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### ABSTRACT

*This research paper aims to provide a comprehensive comparative analysis of the Indian Penal Code (IPC) and Bharatiya Nyaya Sanhita (BNS), lighting upon the important changes in the reform. This research paper emphasizes historical development, legislative frameworks, and key provisions. This study will closely examine the structure and functions of the IPC and the rise of BNS. It will specifically investigate how these changes have affected the Indian legal system. This research paper contains a comprehensive comparative analysis of the Indian Penal Code (IPC) and Bharatiya Nyaya Sanhita (BNS), delving into the intricate legal subtleties woven into these vital legislations. The aim of writing this research paper is to scrutinize the structure and functioning of IPC and the historical evolution of BNS, focusing on how it impacts the Indian legal system. Furthermore, by juxtaposing these two legal frameworks, this study aims to uncover the commonalities, distinctions, and socio-legal ramifications of their execution. The paper highlights the significance of the BNS reform in Indian law, which prioritizes justice over punishment. BNS focuses on addressing inequalities and injustices, believing that this approach will reduce crime and promote peace. The comparative analysis in the paper contributes to the ongoing discussions on legal reform, encouraging policymakers and stakeholders to critically examine and improve the criminal justice system to ensure fairness and equity. The comparison stresses a shift in focus towards emphasizing justice rather than just punishment, intending to update and simplify the legal system to deal with the complexities of society. By promoting harmony between old and new ways, the BNS aims to cater to the varied requirements of Indian society in the 21st century, adding to the current debates on legal changes for a more just and fair future.*

**Keywords:** Indian Penal Code (IPC), Bharatiya Nyaya Sanhita (BNS), Legal Reform, Comparative Analysis, Historical Evolution, Legislative Frameworks, Justice, Fairness, Modernization, Societal Complexities, Cybercrime, Terrorism.

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## INTRODUCTION

The "Historical Evolution" section explores how India's legal system has changed over time, showing how laws and people's actions have evolved along with society. The IPC, written in 1860, has consistently been updated to reflect society's changing needs. The BNS, on the other hand, aims to fix problems with the IPC by emphasizing fairness, impartiality, and relevance.

Comparing the IPC and BNS, the IPC has 23 chapters and 511 sections, while the BNS has 20 chapters and 358 sections. The BNS includes new crimes, alters sentencing lengths, and raises penalties, particularly for current issues like cybercrime and terrorism. Important changes in the BNS involve revising the definitions of "child" and "gender," expanding the definition of "document" to include electronic records, and criminalizing activities like organized crime and mob lynchings.

We will also deal with the reason behind the emergence of BNS in our legal system and try to cover the changes brought in the laws and articles in BNS. This proposed legislation is an attempt to cover and solve the complexity of the current legal framework and help modernize the criminal justice system.

## HISTORICAL EVOLUTION

Historical evolution is "A process which brings cumulative changes in learned, system, rule, behaviour and knowledge of the people which occur from generation to generation." The historical revolution of the legal system in India basically contains the changing rules and necessities of the changing time period.

### Historical Evolution Of the Indian Penal Code

The Indian Penal Code was India's official criminal code, which was inherited by British India. The code was drafted on the recommendations of the first Law Commission of India established in 1834 under the Charter Act of 1833 under the chairmanship of *Thomas Babington Macaulay*<sup>1</sup>. The draft then underwent careful scrutiny by *Barnes Peacock*, who later became the first Chief Justice of the Calcutta High Court, and the future puisne judges of the Calcutta High Court, who were members of the Legislative Council and was passed into law on October 6, 1860. The code was put into action by January 1, 1862. The code came into force

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<sup>1</sup> Lal Kalla, Krishan (1985). *The Literary Heritage of Kashmir*. Jammu and Kashmir: Mittal Publications. p. 75. Retrieved 19 September 2014.

in Jammu and Kashmir on October 31, 2019, by virtue of the Jammu and Kashmir Reorganization Act, 2019, and replaced the state's Ranbir Penal Code.<sup>2</sup>

For a long period of time, IPC has continuously unfolded in response to new challenges and complex shifts in society. Exploring the dynamic development of the IPC throughout history is crucial for embarking on its Strengths, Weaknesses, and impact on the current legal framework.

### **Emergence Of Bharatiya Nyaya Sanhita**

On August 11, 2023, the Government introduced a Bill in the Lok Sabha to replace the Indian Penal Code with a draft Code called the Bharatiya Nyaya Sanhita (BNS)<sup>3</sup>. The Bharatiya Nyaya Sanhita is a comprehensive replacement for IPC, introduced on December 25, 2023, aiming to identify the drawbacks of the current legal system as the new penal code of India. It was examined by the Standing Committee on Home Affairs.<sup>4</sup>

The introduction of BNS has sparked debates and discussions among different policymakers, legal scholars, lawmakers, and politicians.

The idea for BNS surfaced as a reaction to the perceived insufficiencies of the IPC, aimed at enhancing its effectiveness and relevance. Through its historical context, BNS continuously upholds its promise to uphold justice, impartiality, and pertinence within the Indian legal system, demonstrating a steadfast dedication to these values.

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## **COMPARATIVE ANALYSIS: LEGISLATIVE FRAMEWORK AND PROVISIONS**

### **Indian Penal Code**

The Indian Penal Code 1860 consists of 23 chapters, comprising 511 sections, each addressing specific categories of offences. The structural organization makes it easier to identify and categorize criminal acts, which results in a more systematic process of interpreting and implementing the law. The objective of this act is to provide a general penal code for India.<sup>5</sup>

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<sup>2</sup> Jammu and Kashmir reorganised into UTs of JK and Ladakh, security under centre's ambit, state constitution Ranbir Penal Code abolished. Firstpost.

<sup>3</sup> <https://aninews.in/news/national/general-news/legal-experts-hail-centres-move-to-revamp-colonial-era-ipc-crpc-indian-evidence-act20230811184754/>

<sup>4</sup> Report No. 246, The Bharatiya Nyaya Sanhita, Standing Committee on Home Affairs, Rajya Sabha, November 10, 2023.

<sup>5</sup> Preamble of the IPC.

The code contains an introduction, going ahead with the explanations and exceptions used in it, and covers a wide range of offences and penalties for the same. The severity of an offence and the resulting harm determine its classification. Punishments range from fines to imprisonment and, in some instances, even the death penalty. This system aims to accurately reflect the seriousness of a crime and also discourage others from committing similar acts.

As the cornerstone of criminal legislation, the IPC holds immense sway over our society. Its rules and regulations hold sway over individual actions, shape law enforcement strategies, and set the benchmark for justice. The code is vital in preserving harmony, safeguarding people and assets, and ensuring that the law is upheld.

### **Bharatiya Nyaya Sanhita**

The Bharatiya Nyaya Sanhita is comprised of 20 chapters and 358 sections, and its structure is like that of the IPC. This reform includes the introduction of 20 new offences and a drop of 19 provisions, increased sentencing durations for 33 offences, and raised fines for 83 offences<sup>6</sup>. A mandatory minimum punishment has been introduced for 23 offences. A sentence of community service has been introduced for six offences<sup>7</sup>.

The recently enacted law embodies the ideals of fairness, morality, and fundamental liberties, mirroring the ever-changing landscape of criminal law. The proposed statute aims to streamline legal terminology, streamline the legal process, and tackle relevant issues like cybercrime and terrorism, all while retaining the interest and involvement of the populace. The BNS provisions aim to streamline legal terminology, improve procedural effectiveness, and keep pace with the ever-changing demands of our society.

### **KEY PROVISIONS OF BHARATIYA NYAYA SANHITA**

Many changes have taken place during this reform, including the introduction of new sections and provisions. These new sections are introduced for modern technology, and offences for the same are also codified, keeping the complexity of society in mind. The BNS is an upgraded version of IPC, which covers various offences that were not defined previously. The major changes brought in by this reformed code are notable as they are not just for the sake of

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<sup>6</sup> India's Historical Legal Reform: The Introduction of Bharatiya Nyaya Sanhita- Major Changes, 2023.

<sup>7</sup> News Desk, India 2023, Explained: Bharatiya Nyaya Sanhita, the new IPC, and the concerns around it.

punishment now but are also majorly focused on the justice part of any case. Some of the major changes in BNS are:

- It introduced the definition of child in section 2(3) of BNS.
- Now, In section 2(8) of the IPC, the term "gender" has been interpreted to refer to only two genders: male and female. However, under section 2(10) of the BNS, "gender" now includes "transgender" to mean other than "male" and "female" genders.
- The definition of 'Document' now includes electronic and digital records in section 2(8) of BNS.
- Regardless of its nature, the definition of 'movable property' now encompasses all property. BNS's Section 2(21) removes the phrase "are intended to incorporate corporeal" just immediately before property in Section 22's definition of movable property according to IPC. Hence, movable property means anything except real estate yet may exist as tangible (physical) matter or otherwise. The definition of movable property by BNS would extend to cover intellectual property rights(IPRs) such as patents and copyrights.
- Offences and women and children are described in a new chapter.
- New criminal activities such as organized crime, terrorist acts, low-level organized crime, hit-and-runs, mob lynchings, employing children to commit crimes, exploiting women through deceit, robbery, abetting crimes outside India, and endangering the sovereignty, integrity, and unity of India, as well as the dissemination of false or fake news, have recently been added to the list of offences.
- The act of attempting suicide has been erased.
- Introduced beggary as a means of exploitation for trafficking.
- The new law also applies to a serious matter of criminal disturbance, murder or severe bodily harm by any gang of five or more persons on the grounds specified under section 103, such as casteism, communalism, regionalism, sexism, racism, prejudice based on ethnicity, or religion.
- The number of days, according to the definition of grievous hurt, has been reduced from 20 to 15.

- The other amendment that has been made by BNS, 2023, is that causing death by negligence, as we have in 106 (i), used to carry 2 years, has seen an increase in the prison term to five years. Furthermore, it specifies that any act of this nature committed by a registered medical practitioner attracts imprisonment extending up to two years, including a fine.
- The punishment for theft of less than 5,000 is now community service. A new Section 304 of BNS 2023 has introduced 'Snatching' as an offence which states, "theft is snatching where the theft is committed by suddenly or quickly taking forcefully a property movable from another person's possession in his or her person". Hence, whoever is guilty of snatching is liable for three years imprisonment in addition to a fine under this section.
- Through the reorganization of offences, similar provisions have been brought together for ease and efficiency.

At the heart of the Bharatiya Nyaya Sanhita, 2023 are hypocritical actions that were not covered in the Thai Penal Code. Its primary reason for doing so is to "consolidate and amend the descriptions of criminality and for other things connected therewith, or that are ancillary thereto". This law is associated with many other remarkable additions that make it appear systematic in its approach to fighting various issues while indicating the determination to ensure justice and clarity.

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## CONCLUSION

In conclusion, this research paper contains an in-depth analysis of the Indian Penal Code (IPC) and Bharatiya Nyaya Sanhita (BNS); exploring their historical development, legislative frameworks, and key provisions has provided valuable insight into the evolution of criminal laws in India. The comparative study has brought to the forefront the continuous efforts to reform and modernize the country's legal system. This reform has shown a paradigm shift, which prioritized justice over punishment. This monumental shift is poised to revamp the Indian legal system, making it better suited to meet the demands of modern society while simultaneously streamlining and improving the overall effectiveness and fairness of the legal process. The Bharatiya Nyaya Sanhita is perceived as a new approach in the field of Indian criminal law that puts more emphasis on justice, inclusivity, and modernity. It is anticipated that the wide-ranging reforms will go a long way in enabling the legal system in India to be

sensitive to contemporary societal requirements and issues. However, moving forward, there is a need to evaluate how effective these new laws will turn out once they come into force and also meet expectations of being fair. By proactively addressing and controlling criminal activity that poses a threat to societal peace and stability, these bills will foster an atmosphere of calmness and harmony. By delving deeply into the origins of criminal behaviour, they will confront and tackle the societal inequalities and injustices that often serve as underlying causes for criminal acts, ultimately targeting the root of criminality itself. To achieve success, BNS must foster a delicate harmony between tradition and modernity. This will allow the legal system to better cater to the multifaceted needs of Indian society in the 21st century. By conducting a comparative analysis, this study further contributes to the ongoing conversation on legal reform, urging all stakeholders to carefully assess and improve the criminal justice system for a fairer and more equitable future.

