



## ANALYSIS OF THE INDIAN PENAL CODE AND THE BHARATIYA NAYAY SANHITA

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### ABSTRACT

*In every society, law acts as a crucial framework for protecting individuals and safeguarding them from various criminal behaviours, helping to maintain social order. In India, to protect the people from crime and maintain discipline in society, the legal Framework of the IPC, the old law, and the BNS, the new law, has been implemented by the people. Indian Penal Code [IPC] and Bharatiya Nayay Sanhita [BNS] both are frameworks under criminal offences which include all the acts that are committed on Indian territories and all the people who are residents of India. IPC and BNS both are sets of laws that outline what actions are considered illegal and the penalties for those actions in other words Both defines all the criminal act which should not be done by people's as it is considered crime and also defines punishments which one has to survive who had reacted in criminal behavior and has conducted offence. The IPC is the older law, enacted in 1860, while the BNS is a newer, modernised version designed to replace the IPC. The BNS introduces new provisions to address contemporary crimes like cybercrime and terrorism, and it emphasises victim rights and speedy trials.*

**Keywords:** Indian Penal Code, Bharatiya Nyaya Sanhita, Sedition, Criminal Law Reforms.

### INTRODUCTION

The IPC was initially drafted under the guidance of Thomas Babington Macaulay and enacted in 1860 during British rule in India. It remained in place after India's independence and was a comprehensive code covering all aspects of criminal law. The IPC covered a wide range of offences, from minor offences to serious crimes like murder, and provided detailed

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definitions, punishments, and legal procedures for each crime. The IPC is divided into chapters and sections, containing over 511 sections, defining various offences and their corresponding penalties. The IPC aims to be a complete code addressing all aspects of criminal law in India. The IPC is based on the principle of both *actus reus* (criminal act) and *mens rea* (guilty mind), meaning that for an act to be considered a crime, both the intent to commit the crime and the actual execution of the unlawful act must be established. The Bharatiya Nyaya Sanhita (BNS), or Indian Justice Code, is the new penal code of India, replacing the Indian Penal Code (IPC) of 1860. Enacted in December 2023 and coming into effect on July 1, 2024, the BNS aims to modernise and refine India's criminal justice framework. It introduces new offences, updates existing ones, and alters punishments, while also incorporating recommendations from a Standing Committee. The BNS seeks to address contemporary societal and technological challenges that the IPC didn't fully address. It aims to streamline the criminal law by removing outdated provisions and adding new offences. The BNS introduces new categories of offences, such as organised crime, petty organised crime, terrorist acts, and others. It introduces new forms of punishment, like community service, and alters existing penalties for various offences. The BNS emphasises social justice by prioritising cases against women and children and focusing on reformatory rather than purely retributive justice. The BNS removes offences like sedition and adultery, which were previously part of the IPC. The BNS introduces specific provisions for organised crime, encompassing various activities like kidnapping, extortion, and cybercrime. Penalties are increased for several offences, including those related to causing death by negligence and criminal breach of trust.

### **WHY INDIAN PENAL CODE CONVERTED TO BHARATIYA NAYAY SANHITA?**

As India continues to modernise, it has become increasingly necessary to reform outdated legal frameworks to meet the demands of contemporary society. The BNS stands as a reflection of this change, incorporating the principles of justice, accountability, and protection for marginalised groups while emphasising reformatory and community-based justice over punitive measures in select cases.<sup>1</sup> The BNS introduces innovative legal provisions while consolidating, simplifying, and updating existing ones to create a more coherent and accessible system. The new law has reduced the number of sections from 511 to 358, but in doing so, it has improved clarity and functionality by grouping related offences, such as those

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<sup>1</sup> Vaquill, <https://vaquill.com/blog/bns-handbook/#:~:text=Preface%E2%80%8B,punitive%20measures%20in%20select%20cases>.

concerning crimes against women and children or offences against the human body. The BNS, 2023, stands apart from the IPC by taking a more structured approach to addressing the complexities of modern crime, including cybercrimes, terrorism, organised crime, and new forms of violence such as mob lynching and deceitful relationships based on false promises. Furthermore, it has removed archaic offences, such as sedition and adultery, reflecting the changing values and ideals of Indian society. In the BNS, offences against women and children, as well as those related to the human body (like murder), are given special importance. All the rules about crimes against women and children, which were spread out in the old IPC, are now combined into one section in Chapter V. Similarly, rules about crimes affecting the human body are grouped in Chapter VI.

### **TRANSITION FROM INDIAN PENAL CODE TO BHARATIYA NYAYA SANHIT**

All acts and crimes committed after the Effective Date of BNS will be governed and punishable under Bharatiya Nyaya Sanhita, not under the Indian Penal Code. What about crimes committed before the Effective Date? Section 358 of BNS, also called section 358 of BNSS, is the repeal and savings provisions that set out the transitional provisions.

Section 358 (2) provides that IPC's repeal will not affect:<sup>2</sup>

- The previous operation of IPC or anything done or suffered under IPC.
- Any right, privilege, obligation, or liability acquired, accrued, or incurred under IPC.
- Any penalty or punishment incurred in respect of any offences committed under the IPC.
- Any investigation or remedy in respect of any such penalty or punishment.
- Any proceeding, investigation, or remedy in respect of any such penalty or punishment as aforesaid, and any such proceeding or remedy may be instituted, continued, or enforced, and any such penalty may be imposed as if the IPC had not been repealed.

The Parliament has also added Section 358(3) to safeguard continuity in the criminal law regime in situations of transition by creating a deeming fiction that anything done under the

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<sup>2</sup> Azb, Confusion at the midnight hour: Can the IPC and the BNSS co-exist? Azb, <https://www.azbpartners.com>

IPC will be considered to have been done under the corresponding provisions of BNS. In India, statutes generally contain a savings clause to ensure that proceedings which have already been instituted before a statute's repeal or amendment can be completed and enforced. The Supreme Court, in *Hindustan Unilever Ltd. V. State of Madhya Pradesh*, reported at (2020) 10 SCC 751, interpreted the repeal and savings provision under the Food Safety and Standards Act, 2006 (FSSA) to clarify the transition from the Prevention of Food Adulteration Act, 1954 (PFA). Similar to Section 358 of BNS, Section 97 of FSSA repealed PFA but protected the punishments imposed under PFA. In *Hindustan Unilever's* case, the offence under PFA had been committed in 1989 (before FSSA), but the trial court passed its judgment only in 2015 (after FSSA). The Supreme Court held that a violation of PFA committed before FSSA came into force will continue to be punishable as per the provisions of PFA and did not extend the benefit of lower punishment under FSSA. Section 358 of BNS and the judicial precedents interpreting similar clauses are therefore clear that all acts and crimes committed before the Effective Date, where enquiry or proceedings have been initiated, will continue to be governed by and punishable under IPC. However, what happens where the criminal act was committed before the Effective Date, but the crime was discovered or reported only after it? Is Section 358(2) of BNS adequate to cover situations where the crime occurred but no enquiry, investigation, or proceedings started before the Effective Date? The short answer is – yes. Firstly, the language of Section 358(2) is broad enough to safeguard the application of IPC to a criminal act which occurred before the Effective Date, even if it was discovered or reported later. Anything done under IPC will continue to be governed by IPC, and any liability accrued or incurred under IPC continues to be governed by IPC. It ensures that an accused is convicted under IPC and not BNS for any criminal act committed during the time IPC was in operation. Secondly, criminal legislation cannot be applied retrospectively. Application of criminal legislation is prohibited under Article 20(1). Thirdly, legislation cannot be enforced retrospectively unless the legislation expressly or by necessary implication implies that it is intended to have a retrospective effect. There is no such provision enabling retrospective application of BNS. Lastly, the legal maxim “*lex prospicit non respicit*”, meaning that the law is not typically applied to events that have occurred before the law was enacted. The idea behind this rule of interpretation is that a current law should govern current activities, and laws passed today cannot apply to the events of the past, or in other words, BNS cannot be used retrospectively.

## MAJOR CHANGES FROM IPC TO BNS

**Sedition:**<sup>3</sup> In Indian Penal Code chapter 6 offences against the state (Section 124 A) spread light over the offence of sedition which explain that any individual who by words either written, spoken, signs or by visual representative attempts to or has spread hatred or attempts to excite disaffection toward the government set up by law shall be punishable by life imprisonment with a fine, life imprisonment extended to 3 years with a fine or only a fine.

**Kedarnath vs. State of Bihar:** In this case, the appellant, Kedarnath, has been convicted for sedition and inciting public mischief because of a speech in which he has firmly criticised Congress, the ruling National Party with the ideology of capitalist policies, and instead advocating for the forward Communist Party. Here, the appellant has argued that the act of sedition violates the right of expression mentioned in the Constitution 19(1). Subsequently, the case was transferred to a constitutional bench. The judgement states that the court ruled that only speech that incited or had the intention to create public disorder could be punished as sedition, merely criticising the Government, however strong or inflammatory, did not constitute sedition because of freedom of expression written with people. In Bharatiya Nyaya Sanhita Chapter 7 which is offence against the state where sedition law section 124 A does not exist but it is replaced by section 152 which have similar elements which explains the act of endangering sovereignty, unity and integrity of India It further state that any individual purposely or by knowing by words either spoken, written, sign, virtual representation, electronic communication, or by financial means excites or attempts to excite, armed rebellion or subversive activities which encourage the felling of separatist activities within people and endanger the sovereignty, unity, integrity of India shall be punished with imprisonment for life imprisonment extended to 7 years, and shall also be liable for a fine.

**Terrorist Attack:**<sup>4</sup> Terrorist Act is a newly added offence in Bharatiya Nyaya Sanhita in chapter 6 under offences affecting the human body (section 113). It explains that any individual who does any act or offence which threatens or have intention to threaten the unity, sovereignty, integrity, security with also considering economic security of our country (India) to generate terror or likely to generate terror in people's mind beside any section of

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<sup>3</sup> Indian code Indian Penal Code Section -124, Supreme Court Observer. Ipleaders Blog, Kedar Nath Singh vs. State of Bihar (1962), <https://www.indiacode.nic.in/repealedfileopen?rfilename=A1860-45.pdf>, [www.scobserver.in](http://www.scobserver.in), <https://blog.ipleaders.in>

<sup>4</sup> India Code Bharatiya Nyaya Sanhita, 2023. Section 152, India Code Bharatiya Nyaya Sanhita, 2023. Section 113, <http://www.indiacode.nic.in/handle/123456789/20062>, <https://www.indiacode.nic.in/handle/123456789/20062>

the people in India or any foreign country is an criminal offences of terrorism which is punishable according to law. The terrorist act is conducted by explosive substances by using bombs, dynamite or any inflammable substances, weapons or poisonous and nauseous gases of hazardous nature, which cause damage to people or are likely to cause damage in the following way:

- It may cause death as well as injuries to a person.
- It may also create loss to a property, damage to a property, or destruction of a property.
- The creation of disruption in the supply of any services that are essential to the life of people part of India or any foreign country.
- Damage to the monetary stability of India by the way of production, smuggling or circulation of counterfeit Indian paper currency, coin or any other metals.
- Destroying or damaging the property in India or in any foreign country which is being used or has been intended to be used for defence purposes or certain other purposes of the government of India, considering the state government as well as all the agencies.
- By the use of criminal forces, it attempts to or has called death to any public functionary (public functionary refers to constitutional authorities, it also considers any other functionary notified in the official gazette by the Central government).
- By kidnapping, detaining or abducting any person or persons threatening them to kill and attacking the Government or making them do any act here, the Government consider the Government of India, any state government, all governments of foreign countries, as well as international or intergovernmental organisations.

## **PUNISHMENT OF TERRORIST ACT**

**Section 113(2):** If a terrorist act has resulted in an offence which has led to the death of any person, the guilty shall be punished with death or life imprisonment and also liable for a fine.

In any other case, the guilty must be punished with imprisonment for a minimum of 5 years, which may be extended to life imprisonment till natural death and also liable for a fine.<sup>5</sup>

**Section 113(3):** If anyone conspires, attempts, advocates, abets, advises, incites directly or knowingly facilitates the Commission of an act or any act preparatory, they'll be punished for 5 years up to life, also liable for a fine.

**Section 113(4):** If anyone organises a camp for the training in an act, the recruit for the Commission of the act shall be punished for 5 years to life and also liable for a fine.

**Section 113(5):** Any person who is a member of the organisation and is involved in any terrorist act or offence is punishable for imprisonment extending to life and also liable for a fine.

**Section 113(6):** If anyone voluntarily harbours, conceals or attempts to hide a terrorist offender shall be punished with imprisonment of 3 years, extended to life imprisonment, up to natural life and also be liable for a fine.

**Section 113(7):** If anyone knowingly possesses or acquires property from any terrorist Commission conducted any Terrorist act, shall be punished with imprisonment for a term which may be extended to life imprisonment and also fined.

**Removal of Adultery:** Adultery refers to building a sexual relationship with a person who is not your spouse. Before BNS in IPC, Adultery was considered an offence under section 495. The BNS completely removed the provision of Adultery. 5-judge bench on 27th September, 2018, delivered the judgement of decriminalising adultery. On 31st January, 2023, a 5-judge bench of KM Joseph declared the final judgement, which was passed in 2018. The judgment was based on the observation that the continuation of adultery as a crime is a direct interference with the personal lives of individuals.<sup>6</sup>

**Snatching:** Snatching in IPC was not mentioned as a distinctive offence, but in BNS, Snatching has been differentiated from theft offence in Chapter 17, Offence Against Property. Snatching is explained in Section 304. When any person or offender suddenly, quickly, or

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<sup>5</sup> India Code Bharatiya Nyaya Sanhita, 2023. Section 113, <https://www.indiacode.nic.in/handle/123456789/20062>

<sup>6</sup> Britannica, Supreme Court Observer, India Code Bharatiya Nyaya Sanhita, 2023. Section 304 <https://www.britannica.com/topic/adultery> , <https://www.scobserver.in/cases/joseph-shine-v-union-of-india-decriminalisation-of-adultery-background/>, <https://www.indiacode.nic.in/handle/123456789/20062>

forcibly seizes or grabs away the property. The property must be movable property, which is considered an offence of Snatching. Theft can be said to be snatching if it fulfils the above-mentioned demand. Punishment of Snatching offender will be extended to imprisonment of three years, and shall also be liable to a fine.

## **OTHER ALTERATIONS AND ALTERATIONS**

- Section 111 defines organised crime as an activity which is prohibited by law, conducted by a single person or jointly, like land grabbing, contract killing, kidnapping, cybercrime, trafficking, etc., are punishable offences.<sup>7</sup>
- Community service is now also considered as a punishment according to Section 4 of BNS for petty offences like attempted suicide, misconduct in public by a drunken person, deformation, etc.
- In IPC offences of abetment, attempt and conspiracy were defined in different Sections. Section 170 defines abetment, section 120A defines Conspiracy, and section 511 defines attempt. But in BNS, all these 3 offences are brought together under chapter 4.
- IPC section 309 defines committing suicide as an offence. Where the offender, by committing this act, will be punished for imprisonment up to one year, and also liable for a fine. In BNS, the offence of attempt to commit suicide has been deleted.
- In the BNS act of employing children is now also and punishable offence under section 95, which led to the punishment of life imprisonment minimum of 7 years, extended to 10 years.
- In BNS separate chapter has been formed for women and children, under which all the offences against women and children are brought together. Chapter 5 in BNS defines these offences.
- According to Section 68 of BNS, if any offender builds a sexual relation on a fake promise of marriage, employment, promotion or by suppressing the identity, etc, shall

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<sup>7</sup> India Code Bharatiya Nyaya Sanhita, 2023, <https://www.indiacode.nic.in/handle/123456789/20062>



be punishable with rigorous imprisonment of a minimum of 5 years, which can be extended to 10 years and also the offender shall be liable for the fine.

- Sections 76 and 77 of the Act have become gender neutral in BNS.
- The Age based parameter for differential punishment of gang rape of a minor girl has been removed in BNS and now section 70 (2) prescribe life imprisonment or death penalty for gang rape of women below the age of 18 years.
- The negligent act of hit and run has been addressed in section 106(2) of BNS where if anyone causes death to a person by rash or negligent act and escape from the scene without disclosing to the police officer shall be punished with imprisonment of description or the term which can be extended to 10 years also liable for the fine.
- The section of sedation *RAJDROH* was misused and deleted from BNS. The new section of deshdroh has been added as section 152 in BNS.
- Section 113 of the terrorist act has provided that the case of a terrorist act will be decided by an officer not below the rank of SP to be registered in the provision of BNS or UAPA.
- In section 143, trafficking of persons and beggary have also been introduced as forms of exploitation which are punishable.

## CONCLUSION

IPC and BNS are both Indian legal frameworks. IPC an old criminal act enacted in 1860, which was Drafted by first legal Commission Which was chaired by Thomas Babington Macaulay IPC was an complex legal framework which were made according British privilege as It was a key part of British legal system in India but BNS the New Indian Criminal Code enacted in 2023, that replaces IPC Drafted by legal expert And policy makers to modernise Indian legal framework and reduce the complexity of IPC. Changing the old legal system of IPC to BNS is an immense movement towards modernity, societal upgrade and evolution in the justice system. The Government of India considered it necessary to review the existing criminal laws to strengthen the roots of justice, law and order, and also focus on simplifying the legal framework.

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