

INDIAN PENAL CODE AND BHARATIYA NYAYA SAMHITA IN COMPARATIVE PERSPECTIVE

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Abstract: This paper critically interrogates the very implications of the decolonized transformation by assessing needs, objectives and the features of *Bharatiya Nyaya Samhita* (BNS). The paper compares the old and the new legislation using doctrinal research methodology. To that end paper relies on a thorough review of the legal documents, commission reports, judicial pronouncements and commentaries available in news magazines and social media. Accordingly, this paper divides itself to five parts after a brief introduction. The first part deals with the avowed needs for decolonialization towards a swadeshi framework. The second part details out the stated objectives of new legislation as against the old towards a paradigm shift. The third part dealt with the nature and nuances of remedying the specific limitations of the Indian Penal Code (IPC). The fourth section delved to analyse the implications of deletion, addition and modifications of provisions. The fifth section chocks out the very implications for academia and finally the paper terminates with an overview assessment of the decolonized transformations.

Keywords: IPC; BNS; Criminal Justice System; Penology; Victim.

INTRODUCTION

The nature of law is dynamic, and until today, there has been a significant shift in the types of crimes committed, the methods used by offenders, the types of treatment meted out to them. This has led to a major push for the parliamentarians to replace the antiquated criminal laws of the colonisers. The Indian Penal Code, 1860 (IPC) persisted as a holdover from the harsh laws of the British colonial era before to independence, which were out of step with the rapidly developing modern human rights framework and inclusion based rhetoric. The *Bhartiya Nyaya Sanhita*, 2023 ('BNS') translated as Indian Justice Code, which replaces the age old IPC received the presidential assent on 25/12/2023 and came into force from first July 2024. The enactment of these three new Criminal Acts including BNS has fundamentally altered India's legal system. The decision to eliminate the punitive legislation represents a determination to change and adapt to modernising its legal system and guaranteeing justice for all while also symbolising its ability to adjust and accommodate with the rapidly shifting dynamics of society. This shift from the Lord Macaulay's IPC,

which emphasised "*danda*" (punishment), to the decolonised BNS, which emphasised "*nyaya*" (justice), illustrates how the biggest democracy in the world upholds laws that serve the interests and the aspirations of its citizens. It seeks to give the victim and the accused due justice. The provisions under *Bhartiya Nyaya Sanhita* are an attempt to update the Indian legal system to better address contemporary problems and make it more fair, efficient, and receptive to public demands.

This paper critically interrogates the very implications of the decolonized transformation by assessing needs, objectives and the features of BNS. The paper compares the old and the new legislation using doctrinal research methodology. To that end paper relies on a thorough review of the legal documents, commission reports, judicial pronouncements and commentaries available in news magazines, research papers, books and commentaries in social media. Accordingly, this paper divides itself to five parts after a brief introduction. The first part deals with the avowed needs for decolonialization towards a swadeshi framework. The second part details out the stated objectives of new legislation as against the old towards a paradigm shift. The third part dealt with

the nature and nuances of remedying the specific limitations of the IPC. The fourth section delved to analyse the implications of deletion, addition and modifications of provisions. The fifth section chocks out the very implications for academia and finally the paper terminates with an overview assessment of the decolonized transformations.

THE SWADESHI FRAMEWORK

The IPC persisted as an heirloom from the British pro-independence era, containing obsolete clauses that were out of tune with the burgeoning discourse on inclusiveness and modern rights. Over the period of 163 years since the commencement of our first comprehensive criminal code, there continued to proposals to bring in a new legal era. The journey from Lord Macaulay's IPC to decolonised BNS terminated in a new era under Indian criminal justice system. As it evolved and developed, the criminal justice system in India experienced its share of ups and downs. From a primordial culture with no developed criminal law to the king administering justice to the imposition of Mohammedan criminal law following the Muslim invasion. With the arrival of the British, an Indian Law Commission was formed by the East India Company in 1834 to draft a penal code. Thomas Babington Macaulay, a British colonialist and member of parliament, led the Commission. Following the draft's completion, recommendations were solicited, and on October 6, 1860, the IPC bill was approved. It became operative on January 1, 1862. The IPC's Preamble declared that its goal was to establish a general penal code for the country of India. The punitive aspect of the IPC was implied by its title alone. The word "penal" placed a strong emphasis on punishing offenders." The Indian Penal Code is the most comprehensive Penal Code anywhere in the world," as viewed by Lord Macaulay. Dhagamwar (2007), argued IPC as a far-flung legal imposition that did not meet the native Indian justice systems.

Kapur (2005) had criticised the IPC as intrinsically colonial, claiming that it placed an alien normative framework on India's different legal traditions. Upendra Baxi emphasises the importance of reviewing native legal traditions in order to develop a framework that is relevant to India's current circumstances (quoted Narayan et.al. 2024). Gaur (2019) had documented as to how the IPC has frequently been a "rigid yet

adaptable framework," enabling judicial activism in India.

Addressing the colonial legacy was a huge challenge. The title of the IPC, itself indicated its punitive nature. The word 'penal' emphasized punishing those who commits offences. Eliminating 160 year old colonial baggage is one way to address the legacy of colonialism. bringing criminal law into line with Indian culture and values. This legislation is intended to "decolonise" British criminal laws. To support this legal reform initiative, the Union Government has frequently cited the vocabulary of justice, decolonisation, and citizen centric delivery. The IPC was based on British common law and had several colonial features like creation of an adversarial system of trial encoding of Victorian morality, as seen in the marital rape exception, the criminalization of abortion, and the definition of obscenity.

The 42nd Report of the Law Commission of India on the Indian Penal Code, presided by Mr. K.V.K. Sundaram from 1968 to 1971, which was submitted on June 2, 1971, marked the conclusion of the 5th Law Commission's thorough study of the IPC. The execution of the recommendations in the study went on being kept pending. The Indian Penal Code (IPC) is now replaced by the BNS, which adds 21 new offences, such as mob lynching and hate crimes, and reduces the number of sections from 511 to 358, as detailed in the following section. Additionally, it reinterprets sedition as actions that jeopardise national integrity (treason) and introduces crimes like organised crime, terrorism, and hate speech. "These laws are made by Indians, for Indians, and by an Indian Parliament and mark the end of colonial criminal justice laws," the Union Home Minister told the Parliament (The Hindustan Times, 2024). The main aim was the Indianization of British laws (Swadeshi), which sent a message to the populace that justice should be pursued instead of punishment.

THE PARADIGM SHIFT

A paradigm shift in India's criminal justice system is being realized due to the promulgation of the new law, which intends to make it more equitable, effective, and responsive to the populace's demands (Moolchandani, 2024). Boër, (2013) questioned the legitimacy of the Indian Penal Code. Following table presents a broad comparison between IPC of 1860 and BNS of 2023.

Table 1: Comparing BNS and IPC

Parameter	IPC1860	BNS 2023
Chapters	23	20
Sections	511	358
Sections Added		31
Sections Deleted		19
Sections Introduced		Community Service for 6 Offenses and Mandatory Minimum Punishment for 23 Offenses
Incarceration		Increased for 41 Sections
Penalty		Hiked in 82 Sections

BNS contains 358 sections in 20 chapters while IPC has 511 sections in 23 chapters. 31 new sections have been added in the BNS. 19 provisions that existed in IPC have been deleted. In 41 offences the punishment of imprisonment has been increased and penalty hiked in 82 sections. On the whole, the IPC and the BNS underscore some different approaches, which emphasises the importance of having a nuanced grasp of the historical and cultural settings in which these two legal frameworks were created. The BNS's emphasis on Swarajya, or self-governance, and the principles of natural justice represents a significant departure from the IPC's strict and punitive approach, one that is more in line with the principles of justice, equity, and human rights as enshrined in the Indian Constitution. This change in approach reflects the changing values and needs of Indian society. The nature of paradigm shift is construed hereunder.

Firstly, the shift from Lord Macaulay's IPC, which emphasised "danda" (punishment), to the decolonised BNS, which emphasised "nyaya" (justice), shows that the biggest democracy in the world upholds laws that fulfil the wishes of its people. It seeks to put the victim and the accused first.

Secondly, the IPC's imprecise and sometimes vague definitions terminated in ambiguity in interpretation, which required diligent attention. Modernizing outdated provisions basically included updating of archaic language and outdated concepts for the sake of clarity and consistency. For example, the term "night" in the IPC has been substituted with "after sunset and before sunrise" in the Section 43 of the BNS. Furthermore, mischief caused by fire or any explosive material is

now included in the definition of fire. "Minor" has been replaced with "child". BNS has taken a crucial step forward in recognizing transgenders under clause 2(9) of BNS, read with Section 2(k) of Transgender Persons (Protection of Rights) Act, 2019. This change aligns with the rights of transgender persons as recognised by the Supreme Court in the Navtej Singh Johar v. Union of India case, 2018. By replacing stigmatised and derogatory terms like "lunatic person" and "person of unsound mind" with more sensitive expressions like "person with mental illness" or "having an intellectual disability," the BNS has modernised its lexicon. This change is reflected in both Section 22 of the BNS (which is equivalent to Section 84 of the IPC) and Section 28(b) of the BNS (which is equivalent to Section 90(b) of the IPC).

Thirdly, reflecting on contemporary social realities and technological advancements for time suited criminal justice delivery was considered imminent. An important step towards maintaining the law's relevance in the digital age is the BNS's incorporation of electronic and digital records in its definitions. With so many people using the internet, cybercrimes have significantly increased in India. In recognition of this, the BNS defines technology related offenses in accordance with the BNS, and the Information Technology Act, 2002. This guarantees a more comprehensive delineation of offences perpetrated through digital channels, hence simplifying the prosecution of cybercriminals. The IPC lacked specific sections regarding crimes committed electronically. Further, it expands scope of theft to include data and intangible items. The BNS's inclusion of electronic and digital records in its definitions marks a significant step forward in keeping the law relevant in the digital age.

Fourthly, Indian law needed to Harmonize with global standards and International Human Rights Protocol in order to be a trust worthy partner for strategic diplomatic relations. The body of law known as international human rights law is a body of law that works to promote and safeguard human rights on all levels, including domestic, regional, and international. Traits and customary international law are the primary components that make up this body of law. It is the responsibility of governments to promote and preserve human rights and fundamental freedoms, as stipulated by international human rights legislation.

Fifthly, tackling emerging crimes was difficult if not impossible under IPC. BNS is understood to have made room for combating modern criminal activities such as environmental pollution, hit and run, human trafficking, terrorism, cybercrime, financial fraud, and notably, organized crime. While addressing new forms of social and economic offenses, emphasis was placed on victim protection, compensation, and rehabilitation. BNS's passage is felt to be the ideal occasion to eliminate the exception and acknowledge married women's sexual autonomy and physical integrity. Another hall mark of BNS is addressing the need, for streamlining and promoting gender justice and equality, removing discriminatory provisions, ensuring gender neutral laws and tackling specific crimes against women, children and marginalized groups.

Sixthly, The IPC did not include community service as a form of punishment, focusing instead on jail, fines, or the death penalty. The BNS's use of community service symbolises a more progressive approach to criminal justice, emphasizing reformation over vengeance. Thus, another need driven inclusion in the BNS is the introduction of community service as a form of punishment, specifically for trivial infractions. This approach accords with global tendencies towards restorative justice, where the focus is on rehabilitating offenders and helping society rather than solely punitive measures. BNS adopts modern ideas of restorative justice, focusing on rehabilitation and reformation instead of just punishment. In India, community service as a kind of alternative or noncustodial punishment is being used for the first time, whereby those found guilty of specific crimes must serve in the community for a predetermined quantum of hours without receiving payment. Offenders contribute their time

and energy to help the community rather than going to jail and crowding the otherwise overcrowded prison or paying penalties. Many nations use this as a kind of punishment. Through constructive participation, community service is viewed as a means of rehabilitating criminals and reintegrating them into society. The court will decide the type of community service to be performed. Under BNS for default in payment of fine or default of community service following punishment follows:

- a. Fine not exceeding 5000 or community service– Imprisonment not exceeding 2 months
- b. Fine not exceeding 10,000 or community service– Imprisonment not exceeding 4 months
- c. In other cases, Imprisonment not exceeding 1 year.

Seventhly, other changes of significance under BNS include:

- Expanded Scope of Kidnapping (Section 135)
- Exploitation of Children for Offences (Section 95)
- Offence against human body, women and children given precedence
- All incomplete category of offence are brought together (Attempt, abetment, conspiracy). By criminalising abetment outside of India, Section 48 of the BNS has expanded the reach of law enforcement.
- New provision (Section 117 (3)) has been introduced and provides stringent punishment for grievous hurt which results in persistent vegetative state or permanent disability. Number of days provided for sufferers in a severe bodily pain for the purpose of grievous hurt has been reduced from 20 days to 15 days
- Importation of persons from foreign countries has been made gender neutral to cover both boys and girls
- The concept of theft has also been broadened to encompass the theft of government property, automobiles, etc.
- Section 304 of the BNS now defines "snatching" as a separate crime. Running away after causing reckless or careless driving:
- Section 106 (2) deals with hit and run situations. Recognition of Hit and Run Cases Section 106 (2) of BNS provides for 'death by negligence'. The section reads "Whoever causes death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with

imprisonment of either description for a term which may extend to five years, and shall also be liable to fine; and if such act is done by a registered medical practitioner while performing medical procedure, he shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine”.

- The scope of mischief has been expanded any harm to government or local authority made punishable (Section 324)
- Uniform definition of child is given under BNS
- Beggary is form of exploitation has been introduced
- Under section 104 BNS, whoever, being under sentence of imprisonment for life, commits murder, shall be punished with death or with imprisonment for life, which shall mean the remainder of that person's natural life. In *Mithu v State of Punjab* Supreme Court declared section 303 IPC as unconstitutional. The new change provides the alternate punishment and saves it from the earlier anomaly.

REMEDYING THE LIMITATIONS OF THE IPC

Several additions, deletion, modifications and alterations have occurred. BNS not only has attempted remedying the limitations of the IPC but also rationalized the nature of punishment streamlining the responsibilities of stakeholders under Criminal Justice System including justice delivery and policing. This section relates to an analysis of few handpicked instances of BNS remedying the limitations of the IPC in the specific context of organised crime, terrorism, sedition, mob lynching, sexual offences against women and children, role of police and penalty and justice delivery.

ORGANISED CRIME

The concept of organised crime has been introduced. It includes grave acts like kidnapping, extortion, and cyberattacks committed by the criminal organisations. Organised crime is often linked to large, well organised criminal networks that operate intricate, extremely lucrative actions. Organised crime differs from isolated instances of the designated crimes in that it emphasises group action. Being a part of a gang or engaging in joint unlawful acts with others becomes a distinguishing

feature. These organisations usually operate globally, have hierarchies, and employ innovative strategies to avoid law enforcement. The BNS aims to remedy the limitations of the IPC in fighting organised crime, which sometimes rely on proving specific individual responsibility within loosely organised organisations. The BNS's enlarged definition, more severe penalties, and specific new offences offer a more effective framework for dealing with the complex structures and activities of organised crime syndicates. Attempting or committing organised crime has the following penalties: (i) five years to life in jail with a minimum fine of five lakh rupees, or (ii) death or life in prison with a fine of Rs 10 lakh if the offender passes away. In the past, states held authority over organised crime. Making it a national offence addresses the possibility that it will occur in every state, including those without specific laws. This might result in redundancy for states that currently have unique incongruous crime legislation. Petty organised crime, which the BNS considers as a subclass of organised crime and an offence today, refers to smaller scale criminal operations orchestrated by less experienced organisations or people, usually inside local communities. Included are crimes such as vehicle theft, pickpocketing, and the sale of test questions for public examinations. The extent, complexity, and nature of illicit activities are the primary ways that organised crime and petty organised crime differ from one another. It also emphasises the importance of focussing on the organised crime networks that commit these crimes rather than just the individual offenders. This sets offenders who are part of a gang apart from those who are operating alone. For instance, the maximum penalty for theft is three years in prison; but, if a gang commits the offence, the maximum penalty is seven years.

TERRORISM

The BNS adds terrorism and terrorist acts as crimes. The Unlawful Activities (Prevention) Act of 1967 (UAPA) previously covered this offence. An act is considered terrorism if it aims to: (i) endanger the nation's unity, integrity, security, or economic stability; or (ii) incite fear in the Indian populace or any segment of it. In the event that someone is killed, the punishment for attempting or carrying out terrorism is either (i) death or life in prison and a fine, or (ii) imprisonment ranging

from five years to life in prison and a fine. Terrorism crimes will be tried in Sessions Courts under the BNS. Terrorism was already regulated by specific legislation even though it was not covered by the IPC. This can lead to overlap, increasing the burden and expense of compliance. Section 152 of the BNS, 2023, has been amended to include a new section on acts of secession, armed rebellion, subversive or separatist activities, or endangering the sovereignty, unity, or integrity of India. This clause stipulates that engaging in or attempting to engage in any of the aforementioned behaviours is punishable by up to seven years in jail or life in prison. According to Section 48 of the BNS, anyone who, both inside and outside of India, aids in the commission of any conduct that would be illegal if carried out in India is guilty of abetting an offence under this Sanhita. Section 48 has rendered abetment by someone outside of India a crime, enabling prosecution of those who are located outside. A fine and imprisonment of any kind for a maximum of seven years are stipulated in Section 57 of the BNS.

SEDITION

Sedition, covered under IPC Section 124A, is no longer a crime. The IPC defines sedition as bringing or attempting to bring hatred, contempt, or exciting disaffection towards the Government. The Supreme Court has placed it on hold while a constitutional panel reviews it, BNS decriminalizes sedition as a crime. Instead, it introduces a new provision (Act endangering sovereignty, unity and integrity of India) that penalizes acts such as: (i) exciting or attempting to excite secession, armed rebellion, or subversive activities (ii) encouraging feelings of separatist activities, or (iii) endangering the sovereignty, unity, and integrity of India.

These offences may involve exchange of words or signs, electronic communication, or use of financial means. One could argue that the new clause broadens the definition of actions seen to pose a danger to India's unity and integrity while keeping some aspects of the crime of sedition. The penalty stipulated in this clause is life in prison or a maximum sentence of seven years in jail, together with a fine. Words like "subversive activities" lack definitions, making it difficult to determine what constitutes them. This can lead to problems and be exploited for political ends.

MOB LYNCHING

Because the Indian Penal Code lacks a specific provision for mob lynching, police file a murder case under section 302 (murder in the Indian Penal Code). Experts have previously stated that in light of mob lynching cases, the IPC needs a clear provision to deal with such crimes. Section 103 of the BNS defines it as culpable homicide. When five or more people work together to commit murder on the basis of race, caste or community, sex, place of birth, language, personal beliefs, or any other comparable basis, it is known as mob lynching. BNS makes no explicit reference to "mob lynching." Rather, the crime addresses murders committed by a "group" of five or more people because of their race, caste, community, or personal beliefs. Each member of the group will be punished for this crime by either being executed or being imprisoned for life, in addition to being subject to a fine.

SEXUAL OFFENCES AGAINST WOMEN AND CHILDREN

Chapter 5 of the BNS now encompasses all of the offences against women and children that were formerly scattered across four distinct IPC chapters. Flavia Agnes (2001) demonstrates how IPC provisions failed to fully address deeply established societal disparities.

After BNS, the complicated and scattered provisions of the IPC are no longer an issue. Acts including rape, voyeurism, stalking, and disparaging a woman's modesty are all illegal under the IPC. The BNS retains these provisions along with new addition of "Sexual intercourse by employing deceitful means, etc". Criminalization of sexual intercourse under deceitful means or false promises is introduced. The act of having sex with a lady after falsely promising marriage without sincere intentions is considered an offence. Although it is a distinct offence, the conduct does not qualify as rape.

"Deceitful means" is broadly defined to include inducement for employment or promotion and marrying by concealing one's identity. Punishment for such offence will be imprisonment of either description for a term which may extend to ten years and shall also be liable to fine. It is to be noted that such provisions can also be misused to threaten individuals for marriage.

The modification of definition of 'gender' (Section 2 (10) of BNS) provides gender natural provision in offence against the human body. Earlier under the IPC the males are only responsible for certain offence like Assault and Voyeurism but as per Section 76 and 77 of BNS respectively, these offence are gender natural irrespective of gender any person held responsible for these offence. Secondly the scheme of offence against human body provides comprehensive protection to all the victims by enhancing the quantum of punishment. The substantial increase in the severity of punishment gives victims a sense of security and makes offenders fearful.

Changes in law relating to trafficking of Children which was under special law have been given due recognition. The act of hiring, employing, beggary, or engaging a child to commit an offence, is made a punishable offence under Section 95 of BNS 2023, which entails punishment of imprisonment of minimum seven years, extendable to ten years. Section 366A of IPC provided for offence of procurement of minor girl (under the age of eighteen years). Section 96 of BNS deals with offence of procurement of any child below the age of eighteen years (irrespective of gender).

Word 'child' is substituted for 'person' in section 99 of BNS (373 IPC). Imprisonment prescribed is 'not less than 7 years but which may extend to 14 years'. Earlier prescribed imprisonment was 'ten years'. Age based different punishment for gang rape has been removed; the person is liable for imprisonment of life means rest of natural life or death for gang rape of women below the age of 18 years (Section 70(2)).

A fundamental change brought about by BNS is the inclusion of Section 69, which refers to sexual activity that takes place under the pretext of fake marriage or through other deceptive means. This offence carries a potential sentence of up to 10 years in prison, served concurrently with a fine. To promote gender equality in criminal law, the updated Section 139 of BNS (equivalent to Section 366B of IPC) expands this prohibition to cover the importation of boys younger than 18 for similar illegal actions.

ROLE OF POLICE

The issues pertaining to the role of police as an important organ of criminal justice system, have

also been cared for. How have the fundamental responsibilities of police officers altered since the new criminal laws went into effect? Which provisions regarding the arrest of elderly and disabled individuals have changed? How about keeping digital evidence safe? How is it possible to store electronic evidence?

When an arrest occurs outside of their district, police officers are required to notify the designated police officer and any relevant parties. Police stations are required to post details regarding individuals who have been arrested, such as their names, addresses, and the type of offence they committed. The arrest of elderly and ailing people has been restricted in some way. According to Section 35(7), if an individual is over 60 or infirm and charged with a crime carrying a sentence of less than three years in jail, the arrest of that individual requires the consent of an officer not lower than the rank of DySP. In a similar vein, IOs must employ handcuffs with caution, even though the law now permits their use in specific situations. The Supreme Court has ruled that handcuffing someone is only appropriate in situations when there is a risk of them escaping from detention or hurting themselves or others. The labels "insanity," "lunatic," and "idiot" have been replaced with "unsound mind" as part of the BNS's new mental health regulations.

A police station's official in charge cannot deny a FIR registration on the grounds of disputed jurisdiction or lack of jurisdiction. He is required by law to file a zero FIR, as it is commonly called, and forward the case to the appropriate police station. Although this procedure was previously used as well, Section 173 of the Bharatiya Nagarik Suraksha Sanhita (BNSS) now explicitly states that failure to register a formal complaint may result in penalties under other sections.

The National Informatics Centre created the cloud-based smartphone application "eSakshya" for law enforcement organisations, which enables the taking of numerous pictures and videos. This application can be used to take witness photos and IO selfies. To guarantee data integrity, every item is timestamped and geotagged. Other authorities, including the judiciary, prosecution, and cyber forensic specialists, will have access to this data because eSakshya is an initiative under the Interoperable Criminal Justice System (ICJS).

Police stations are required to post information about people who have been arrested. A police officer in every police station, no less than the rank of Assistant Sub Inspector, is required under Section 37 of the BNSS to be in charge of keeping and conspicuously displaying information regarding the people who have been arrested. Therefore, boards with names, addresses, and the type of offence must be posted outside police stations and district control centres. These boards can be digital as well.

According to Section 184(6) of the BNSS, the registered medical professional is required to send the medical report to the IO within seven days following the victim of rape's medical examination. The IO will then convey it to the relevant magistrate. As a result, physicians need to be made aware of the new legislation. Likewise, POCSO case investigations must be finished within two months of the offence's details being recorded. This deadline was previously exclusive to rape trials under the Indian Penal Code.

PENALTY AND JUSTICE DELIVERY

BNS has made many requisite changes in punishment also, in comparison to IPC. This can also be said as the prominent area of reform in the new law introduced. The changes were done to ensure societal concerns, align with the modern standards and improve the criminal justice system. The Indian Penal Code (IPC), Section 53, lists five different types of penalties that may be imposed on offenders: i) Death penalty, ii) Imprisonment for life iii) Imprisonment, There are two sorts of imprisonment: a) Rigorous (requiring hard work) and b) Simple, iv) Property Forfeiture and v) Fine.

Two of the most important changes in punishment under BNS include:

1. Change in punishment for rape: In the previous law IPC, the punishment for rape was different than what it is now. In IPC, the punishment for rape was imprisonment for a minimum of seven years and a maximum of ten years. But in BNS, the punishment for rape is a minimum of ten years of rigorous imprisonment and a maximum of life imprisonment. Thus, BNS has increased the minimum and maximum years of imprisonment and has introduced the death penalty in certain cases of gang rape. It has also modified

the definition of rape, the burden of proof, and other provisions related to rape. This is a significant step taken by BNS to combat sexual offences occurring in the country.

2. Change in punishment for attempt to suicide: IPC also had a provision for attempt to suicide, but the change was required to tackle the increasing rate of suicide every year. The punishment for attempt to suicide in IPC was imprisonment which could be extended to one year, a fine, or both. The punishment for attempt to suicide in BNS is imprisonment which can be extended to two years, a fine, or both. A major change is that BNS provided treatment for those who have attempted suicide due to mental illness.

In short, the BNS has increased the maximum years for imprisonment but has introduced the provision for mental treatment which can help tackle the escalating rate of suicides and assist those suffering from mental illness. These two are just examples of the changes in punishment among the many changes brought forth. These were required to ensure the criminal justice system is reliable and trusted to serve justice. Overall, changes in punishment will improve effectiveness, protect the rights of victims, and tackle criminal activities in an enhanced way. BNS broadens the spectrum of penalties by allowing community service as a punishment, which may be used instead of incarceration for several minor violations.

The BNS aims to focus on victim rights, notably providing the support they need and ensuring their voices are heard by offering new provisions and victim compensations. The BNS is framed to be user friendly and efficient, which will decrease the margin of errors and improve the criminal justice system. The changes in offences and punishments are designed to combat modern issues and align with current standards.

The BNS, which replaced the IPC, presupposes a significant quantum of adjustments to be made to the way criminal cases are handled, and it may be necessary to exercise control and make adjustments to the emerging legal system. Charges must now be framed within 60 days of the initial hearing, and judgements must be rendered within 45 days of the trial's conclusion. Regardless of jurisdiction, anyone can now file a Zero First Information Report (FIR) at any police station. Police

complaints can be registered online, and summons can be served electronically. For all serious crimes, crime scenes must be filmed.

IMPLICATIONS OF DELETION, ADDITION AND MODIFICATIONS

The IPC was frequently criticised for being ambiguous and incompatible, which caused doubt and prolonged the court proceedings. The BNS makes remarkable progress in recognising gender equality and defending transgender rights in the pursuit of legal reform. Although it takes significant action to remedy protection gaps, its flaws must be recognised. Concerns are raised by the preservation of outdated rules, the exclusion of provisions like Section 377, and the lack of stakeholder and public involvement. BNS appears to pass up the opportunity for a comprehensive modernisation of India's criminal justice system, notwithstanding its efforts at transformation. A fairer and more comprehensive legal system requires understanding the pervasive issue of marital rape beyond age restrictions, and BNS still falls short in enhancing protection against sexual assaults for both genders. The impression arises that there was no need for an entirely new legislation framework, mostly for the purpose of renumbering and reorganising the existing legal provisions. This raises questions about efficiency and necessity of such comprehensive legal overhaul.

The colonial laws combined women's identities with their husbands and were based on an unequal view of men and women. The regressive thinking was reflected in the framing of the Rape (Section 375) exemption. "Sexual intercourse by man with his own wife, provided the wife is not under fifteen years of age, is not rape," according to Section 375(2) of the Indian Penal Code, which makes an exception for rape. Despite raising the legal age of sexual consent for married women from fifteen to eighteen, BNS does not adequately acknowledge the risk of marital rape for women who are older than eighteen. It is crucial to address their interests and give them sufficient legal protection against all forms of spousal abuse, including marital rape, given the sizeable percentage of married women in the community. Provisions under Section 377 of the IPC have been entirely eliminated in BNS.

Despite being in line with the principle of decriminalisation, this has sparked worries about possible legal loopholes and the absence of protections from such actions.

Since all judges and advocates must adjust by studying and comprehending the law, the BNS's numerous new provisions and modifications have increased the task at hand. This will require time and may result in issues and delays. Even though the recently implemented BNS is supposed to be easy to use, there are still difficulties in ensuring consistency and justice throughout interpretations, which makes the BNS regulations a little challenging to apply. While section 2(20) of the BNS mandates that the year or month be reckoned according to the Gregorian calendar, section 49 of the IPC required that it be reckoned according to the British calendar.

One of the encouraging changes brought about by the BNS is the inclusion of community service as a sanction. The Bill must specify what constitutes community service, though. The lack of a clear definition makes it difficult to prevent future sentence conflicts. Therefore, it would be beneficial to compile a list of possible community service initiatives or establish guidelines for appropriate conduct in this area.

The IPC's underlying philosophy is rooted in the concept of retributive justice, which emphasizes punishment as a means of retribution for offenses committed (Braithwaite, 1989). Even with the new law, the sentencing procedure is still completely inconsistent (Mishra, 2023). Whether we adhere to the sentencing principles of retribution, rehabilitation, or deterrence is unclear. There is no underlying principle for the increased penalties or the addition of new offences. To deter crime, the legislator must understand that tougher penalties alone are insufficient. Although community service has been implemented as a reformatory penalty, it is only applicable to six offences and has no justification, and jail punishment is nevertheless frequently used. As a result, sentencing must be consistent and rely more on community service, probation, reformatory sentencing, and noncustodial sanctions as rehabilitation tools.

Similarly, solitary confinement cannot be used as a form of punishment in the modern era. Given the advancement of human rights and the rights

protected by Article 21 of the Constitution, such as the rights of prisoners, civil freedoms, and dignity, as well as the growing importance placed on mental health, solitary confinement should have been outlawed.

IMPLICATIONS FOR ACADEMIA

As because the BNS is relatively new, extensive scholarly research comparing it to the IPC is currently appearing. A trend study is required throughout time to organise empirical evidence on effectiveness. There has been no empirical research into how suggested BNS improvements might improve practical outcomes in the justice system when compared to the current IPC. It has been critical to identify victim-centric frameworks because both laws appear to lack complete victim-oriented provisions, particularly compensation procedures. Similarly, there is a need to focus on intersectional concerns, including the disparities in experiences of women, minorities, and marginalised populations within IPC and BNS. Gender norms and protection are not adequately addressed in either the IPC or the discussion of BNS changes. Feminist researchers such as Flavia Agnes (2001) emphasise how both institutions fail to effectively address deeply established societal inequities. For example, while marital rape is hotly debated in India, the IPC has yet to handle it adequately, and BNS debates have thus far abstained from including progressive provisions. The literature as of now lacks a comprehensive examination of how BNS can effectively combat quickly expanding digital crimes.

The advent of BNS creates new avenues for scholarly investigation. A rich area of research will be comparative legal studies, which will look at the distinctions between the IPC and BNS and their effects. Human rights law research, as part of BNS, is likely to gain increasing attention. As researchers look at how BNS influences current legal policies and aids in the creation of new ones, policy analysis of changing legal framework and implementation dynamics will become more and more significant. Numerous job options in litigation, academics, consulting, and policymaking may be made possible with the coming of BNS.

For law students, the implementation of BNS marks a fundamental change that will influence their professional trajectories and careers. The upcoming generation of attorneys will be ready to defend justice, take on contemporary legal issues, and participate in the international legal community if they embrace the changes and innovations. Lawyers who receive training under the new code may be better equipped to interact with international legal systems, take part in international legal debates, and help shape international law. They are likely to be able to handle a variety of legal difficulties.

AN OVERVIEW.

The Bharatiya Nyaya Samhita has been promulgated as a prospective modernised replacement for the IPC, with the goal of aligning India's legal system more closely with its indigenous, cultural, and constitutional values while keeping contemporary demands in mind. This paper sought a comparative analysis of the IPC and BNS by reviewing relevant materials under important themes, agreements and disagreements, and more so existing gaps in understanding this transitional period in Indian legal history.

The BNS aims to increase public safety and facilitate access to legal remedies by providing clarity and more severe penalties for hate crimes in the direction of a just society. By addressing modern, emerging issues with their new avatars, such as organised crime and economic offences, emphasising identity and authenticity in the context of technological advancements, and instituting community service as a form of penal justice, this new criminal law seeks to restructure the legal system. To make sure that investigative agencies don't overreact or misuse their power during interrogations, a significant number of measures have been put in place to prevent violence during custodial interrogations. The wellbeing of the entire society and the defence of the rights of the citizens as a whole must be properly protected.

These modifications show India's dedication to harmonising its legal system with international standards, which is crucial for fostering trust and cooperation in trade and international relations. By demonstrating its commitment to justice and human rights, India positions itself as a reliable

partner in the global economy, attracting investment and cultivating diplomatic ties. Initiatives to expedite court procedures and reduce the backlog of cases, for example, show a sincere effort to increase the efficiency and accessibility of the judiciary. This not only ensures residents receive justice promptly, but it also instils trust in India's judicial system among overseas companies and partners.

The actual impact of the BNS on India's criminal justice system will become apparent in the upcoming years as the country follows this new legislative course. In addition to being a statutory reform, the switch from the IPC to the BNS reflects

India's evolving legal system, which aims to be more equitable, inclusive, and modern.

Even while the implementation has presented numerous difficulties, including greater workload and cautious execution, it has also made it possible to improve accessibility, responsiveness, and fairness. Ultimately, BNS is portrayed as a step towards modernisation and decolonisation. The promulgation of the new legislation is not even a year old now. There is an urgent need for rigorous academic research, policy modifications, and empirical testing to guarantee that the transition from IPC to BNS is consistent with modern India's democratic and constitutional goals.

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