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**PROCEEDINGS OF THE NATIONAL CONFERENCE**

**ON**

**LEGAL ASPECTS OF BHARATIYA NYAYA  
SANHITA AND ITS IMPACTS ON INDIAN CRIMINAL  
JUSTICE SYSTEM**

**VOLUME - II**

21<sup>st</sup> March 2025

**PROCEEDINGS OF THE NATIONAL CONFERENCE ON  
LEGAL ASPECTS OF BHARATIYA NYAYA SANHITA AND  
ITS IMPACTS ON INDIAN CRIMINAL JUSTICE SYSTEM**

Held on 21<sup>st</sup> of March 2025



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**Book of conference Proceedings**



**Proceedings of the National Conference on LEGAL ASPECTS OF BHARATIYANYAYA SANHITA AND ITS IMPACTS ON INDIAN CRIMINAL JUSTICE SYSTEM, March 21<sup>st</sup> 2025.**

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## **FOREWORD**

It gives me immense pleasure to present this volume of conference proceedings on the theme “**Legal Aspects of Bharatiya Nyaya Sanhita and Its Impacts on the Indian Criminal Justice System**”. This compilation is the outcome of rigorous academic deliberations, scholarly debates, and insightful presentations made during the national conference that sought to examine one of the most significant legal reforms in contemporary India.

The **Bharatiya Nyaya Sanhita (BNS), 2023**, along with the *Bharatiya Nagarik Suraksha Sanhita* and *Bharatiya Sakshya Adhinyam*, marks a historic shift from the colonial-era penal statutes that have governed Indian criminal law for over a century. These reforms aim to align the criminal justice system with the ethos of a sovereign, democratic republic, reflecting the aspirations of a modern India while safeguarding constitutional values and individual rights.

The papers presented and compiled in this volume cover a wide spectrum of themes — from a critical analysis of substantive changes in criminal law to procedural innovations and their likely impact on law enforcement, the judiciary, and society at large. Scholars, jurists, practitioners, and academicians have thoughtfully examined the challenges and opportunities that the new Sanhita brings forth.

As India stands at the cusp of this legal transformation, it is crucial for all stakeholders to engage deeply with the implications of these changes. This collection not only serves as a scholarly resource but also as a catalyst for future discussions, research, and reforms needed to strengthen our criminal justice system, ensuring it is just, efficient, and truly reflective of *Bharatiya* values.

I extend my heartfelt congratulations to the organizers, contributors, and editorial team for bringing together such a comprehensive and timely body of work. I am confident that this volume will be of immense value to legal scholars, policymakers, practitioners, and students alike.

**Dr. P. ASHOK KUMAR**  
**Principal,**

**21-03-2025**

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## 1. MODERN CRIMINAL OFFENSES IN INDIA: A STUDY OF ECONOMIC AND CYBER CRIMES UNDER THE BNS

DR. NISHADEVI<sup>1</sup> & K. ABITHA<sup>2</sup>

### Abstract

*The Bharatiya Nyaya Sanhita (BNS), which replaces the Indian Penal Code, introduces significant reforms in addressing economic crimes, cybercrimes, and emerging criminal offenses in India. Economic crimes, including financial fraud, money laundering, and corporate offenses, have been evolving with globalization and digitalization, necessitating stringent legal measures. Simultaneously, cybercrimes such as hacking, identity theft<sup>3</sup>, cyber terrorism, and online financial fraud pose growing threats to individuals, businesses, and national security. The integration of technology in financial transactions has further given rise to emerging criminal offenses, such as cryptocurrency-related frauds, AI-driven cybercrimes, and deepfake-based financial scams.*

*This paper critically examines the provisions under the Bharatiya Nyaya Sanhita that address economic and cybercrimes, analyzing their adequacy in tackling modern criminal challenges. The study explores key amendments, the introduction of new offenses, and the enhancement of punishments for digital and financial crimes. Additionally, it assesses how the BNS aligns with international legal standards and whether it strengthens India's legal framework against cross-border economic offenses<sup>4</sup>.*

*Furthermore, the research highlights the role of law enforcement agencies, regulatory bodies, and the judiciary in implementing these legal provisions effectively. The study also discusses potential challenges in enforcement, such as jurisdictional issues, technological advancements outpacing legal reforms, and the balance between cybersecurity measures and individual privacy rights<sup>5</sup>.*

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<sup>2</sup> K.Abitha, Pursuing LLM, Government law college , Coimbatore.

<sup>3</sup> Information Technology Act, 2000 (as amended in 2008), Government of India.

<sup>4</sup> Ministry of Electronics and Information Technology (MeitY), National Cyber Security Policy, 2021.

<sup>5</sup> M.C. Mehta v. Union of India, (1987) 1 SCC 395 – interpreting the evolving scope of rights with technology.

*By analyzing the evolving landscape of economic and cybercrimes within the framework of the Bharatiya Nyaya Sanhita, this paper aims to contribute to legal scholarship and policy discussions on enhancing India's criminal justice system. The findings emphasize the need for continuous legal evolution, inter-agency cooperation, and the integration of technological tools in crime prevention and prosecution.*

**Keywords:** *Bharatiya Nyaya Sanhita, Economic Crimes, Cyber Crimes, Financial Fraud, Money Laundering, Cryptocurrency Fraud, AI-driven Crimes, Digital Security, Cyber Law, Criminal Justice Reform*

## **Introduction**

Crime has always evolved alongside society, adapting to new technologies, financial systems, and loopholes in the law. In India, while traditional crimes like theft, murder, and physical assault continue, a new wave of offenses has taken center stage—economic crimes and cybercrimes. These crimes are more sophisticated, harder to trace, and often have devastating consequences for individuals, businesses, and even national security.

With India's rapid digitization and expanding financial sector, criminals have found new ways to exploit vulnerabilities in the system. Recognizing the urgency of addressing these modern offenses, India replaced the Indian Penal Code (IPC), 1860, with the Bharatiya Nyaya Sanhita (BNS), 2023<sup>6</sup>. This legal shift aims to strengthen the fight against economic and cybercrimes by introducing new provisions and streamlining crimes, involve the use of financial deceit for personal or corporate benefit. These crimes include various forms such as bank fraud, Ponzi schemes, insider trading, and money laundering. As digital banking, stock market investments, and online transactions have proliferated, financial crimes have become increasingly complex, resulting in greater challenges for authorities in apprehending perpetrators.

## **How the BNS Addresses Economic Crimes**

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<sup>6</sup> Bharatiya Nyaya Sanhita, 2023, Ministry of Home Affairs, Government of India.

### **1. Cheating and Fraud (Sections 316 & 317)**

- These segments address financial deceit, encompassing fraud related to business transactions, banking operations, and investment scams.
- Online financial scams, including fraudulent job offers and lottery scams, are now encompassed within broader definitions.

BNS imposes serious fines on those who fit important documents or fake currencies.

2. This helps in the prevention of financial fraud related to false banknotes, land documents and business contracts.

### **3. Criminal violation of confidence (articles 321-323)**

1. A misuse of funds or assets to which a person is faithful, especially in the banking and corporate sectors, is considered to be more strictly.

2. The battle between the Ponzi administration and financial fraudsters.

3. Fraudulent investment plans that attract people with high profitable promises have more strict fines enforcement.

### **Economic crime management issues**

One of the most urgent issues facing the Indian legal and financial institutions in recent years is economic crime<sup>7</sup>. These crimes, which include tax evasion, embezzlement, money laundering, fraud<sup>8</sup>, and large-scale business frauds<sup>9</sup>, seriously jeopardize national economic growth in addition to undermining public confidence. A strong and well-coordinated institutional structure is necessary for managing such crimes successfully, but India still faces a number of structural, procedural, and systemic issues that make it more difficult to combat economic offenses.

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<sup>7</sup> S.P. Srivastava, *Economic Offences in India: Law and Practice*, Eastern Book Company, 2020.

<sup>8</sup> Reserve Bank of India, *Report on Trends and Progress of Banking in India*, 2022.

<sup>9</sup> United Nations Office on Drugs and Crime (UNODC), *Global Report on Financial Crime*, 2021.cyber teryber.

The absence of specialist investigative infrastructure devoted only to economic crimes is one of the main problems. Even if traditional crimes are still successfully handled by law enforcement, they frequently lack specialized wings with the knowledge and resources needed to look into intricate financial frauds. This issue is made worse by the lack of qualified data analysts, financial auditors, and forensic accountants. Investigation teams are frequently ill-prepared to deal with contemporary methods like blockchain tracing, digital forensics, and artificial intelligence -based fraud detection systems—tools that have proven indispensable in unravelling the intricate web of transactions involved in white-collar crimes.

Another significant obstacle is the presence of jurisdictional issues. The majority of economic crimes are not limited to a single place; they usually cross state lines and are becoming more and more global in scope. Coordination between federal and state law enforcement agencies is made more difficult by the multijurisdictional character of offenses. Furthermore, India frequently has trouble getting other governments to cooperate with its investigations or extraditions, which causes major delays in catching criminals and gathering evidence.

Another serious issue is judicial delay. The effectiveness of economic crime deterrence is undermined by the protracted trials that frequently follow the backlog of cases in Indian courts. Because economic offenses are inherently complex and document-intensive, they call for specific expertise and competent treatment. However, further stalling results from procedural bottlenecks and the lack of specialized benches for economic offenses in many courts. Delays in convictions therefore convey a poor message about justice and responsibility, which in turn promotes recurrent offenses and erodes public trust in the legal system.

Furthermore, inadequate regulatory supervision exacerbates the issue. Even though India has a number of regulatory agencies, including the Serious Fraud Investigation Office (SFIO), Reserve Bank of India (RBI), and Securities and Exchange Board of India (SEBI), prompt action is frequently hampered by their inability to work together seamlessly. Early indicators of financial irregularities may not always be aggressively addressed by enforcement

mechanisms, which are slow and dispersed. Companies and individuals also take advantage of weaknesses in corporate governance structures to perpetrate financial crimes, such as insider trading and financial statement fraud.

Still inadequate and ineffective is inter-agency cooperation.

Another serious concern is the influence of political and business groups on the investigation and prosecution process. High-profile economic offenders frequently get implicit or explicit protection as a result of political links or industry lobbying. Many times, action is postponed or weakened to prevent political shame or economic consequences. Corporations, fearing reputational harm, also avoid from reporting internal crimes or embezzlement, allowing perpetrators to evade detection for extended periods of time.

Economic crime detection is further weakened by low public awareness and reporting levels. A lot of these crimes go unreported or undiscovered because of institutional mistrust, cultural stigma, or fear of becoming involved in the legal system. Victims of white-collar crime, in particular, frequently avoid contacting the police, especially if the loss is perceived as internal or recoverable. Additionally, the lack of financial literacy in rural and semi-urban areas is still dreadfully low, leaving them more vulnerable to fraud and economic exploitation.

Finally, one of the most technical yet critical issues is gathering evidence. Economic crimes frequently entail a complex web of transactions, dummy firms, computerized payment methods, and offshore accounts. Tracing the origin and flow of illicit funds necessitates modern techniques, interbank data access, and international financial intelligence collaboration. Critical papers are frequently destroyed or encrypted, and without prompt intervention or technical backup, investigators struggle to create a credible case.

### **Cybercrime: growing digital threat**

Cybercrime<sup>10</sup> has become one of the biggest risks to economic stability, personal privacy, and national security in the quickly changing digital landscape. The growing dependence on digital banking, e-commerce platforms, internet-enabled services, and online communication

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<sup>10</sup> Pavan Duggal, *Cyberlaw: The Indian Perspective*, Saakshar Law Publications, 2023.

has made the cyber world a two-edged sword that presents both danger and convenience. These days, cybercriminals take advantage of technology weaknesses to perpetrate crimes including financial fraud, ransomware attacks, phishing scams, identity theft, cyberstalking, and even cyberterrorism. Such cyber transgressions are on the rise in India, which has one of the fastest-growing digital economies in the world. The scale and sophistication of these crimes have increased because to the move to digital infrastructure, especially during and after the COVID-19 outbreak.

What was formerly confined to email hacking or website defacement has now transformed into extensive data breaches, major infrastructure damage, and misinformation operations utilizing deepfakes. Detection and enforcement have become even more difficult due to the growth of darknet marketplaces, sophisticated hacking tools, and anonymous payment systems like cryptocurrencies. Due to a lack of qualified cyber forensic specialists, poor infrastructure, and antiquated regulatory frameworks, law enforcement organizations frequently encounter difficulties in combating cybercrimes. Even while the Information Technology Act of 2000 was innovative at the time, it is unable to keep up with the ever-changing nature of cyber dangers in the modern world. Furthermore, jurisdictional problems lead to legal ambiguity and procedural delays in investigation and prosecution because the majority of cybercrimes occur beyond national borders.

The danger is not limited to individuals; even big businesses and governmental organizations are becoming targets of targeted cyberattacks, which increases the possibility of data breaches and crucial system breakdowns. A strong, flexible, and integrated cybercrime management policy is more important than ever, even in the face of initiatives like CERT-In, Cyber Swachhta Kendra, and Digital India's cybersecurity standards that aim to improve digital security measures. To combat this expanding online threat, it is crucial to raise public awareness, promote digital literacy, and include cutting-edge cybersecurity solutions like blockchain-based data protection, AI-driven threat detection, and more robust encryption.

### **Key provisions on cybercrime under BNS**

With the introduction of the Bharatiya Nyaya Sanhita (BNS), 2023, the Indian legal landscape has taken a significant step toward modernizing its criminal justice system by incorporating contemporary challenges, especially in the realm of cybercrimes. Recognizing the growing threat of digital offenses and the inadequacies in the traditional legal framework, the BNS has included dedicated provisions to address various forms of cybercrimes, which were previously scattered or insufficiently covered under older statutes like the Indian Penal Code, 1860 and the Information Technology Act, 2000.

One of the notable provisions under BNS is Section 69, which addresses offenses involving “identity theft and cheating by impersonation using computer resources or electronic means.” This section criminalizes acts where individuals fraudulently use another person’s identity information, such as login credentials, biometric data, or financial details, for deceptive purposes. This provision is crucial in tackling the rising cases of phishing scams, online banking frauds, and social media impersonation.

Another important provision is Section 66, which deals with “publishing or transmitting obscene material in electronic form.” This section extends the legal framework to cover cyber pornography, circulation of obscene content through messaging apps, and misuse of digital platforms for sexually explicit content. It is a critical step in addressing offenses like revenge porn, deepfake pornography, and cyber sexual harassment.

The BNS also recognizes cyberbullying, online stalking, and digital defamation as punishable offenses under different sections that deal with intimidation, criminal intimidation, and defamation using electronic mediums. Though these offenses existed in principle under the IPC, the BNS seeks to clarify and broaden the scope by explicitly acknowledging electronic means as a mode of commission.

Additionally, Section 73 of the BNS lays down punishments for tampering with electronic records or documents, recognizing the widespread use of digital records in legal, commercial, and governmental transactions. This provision aims to curb document forgery, digital signature manipulation, and falsification of e-records, which are increasingly common in online banking and corporate dealings.

Moreover, cyber terrorism<sup>11</sup> and threats to national security using digital means have also found a place in the new law. The BNS imposes stringent penalties for any use of digital platforms for promoting terrorist ideology, spreading communal hatred, or disrupting public order through misinformation and hate speech online.

What sets the BNS apart is its attempt to integrate cyber offenses within the core criminal framework, instead of relegating them solely to specialized laws like the IT Act. This integration helps establish clear jurisdiction, better procedural clarity, and stronger linkage with criminal procedure provisions, thereby improving enforcement and prosecution outcomes.

### **Comparative Analysis: India's Approach vs. Global Legal Frameworks on Cyber Crime & Economic crimes**

India has made significant strides in tackling economic and cybercrimes, but its legal and institutional framework still faces challenges when compared with global standards. The country primarily relies on statutes like the Information Technology Act, 2000, the Prevention of Money Laundering Act (PMLA), 2002, the Companies Act, 2013, and provisions under the Bharatiya Nyaya Sanhita (BNS), 2023. However, these laws often lack integration, modern relevance, and enforcement efficiency.

In contrast, countries like the USA, UK, EU nations, and Australia have comprehensive, sector-specific, and technologically advanced frameworks:

- The USA's Sarbanes-Oxley Act, CFAA, and Patriot Act provide strong deterrence and corporate accountability.
- The UK's Economic Crime and Corporate Transparency laws, along with its Computer Misuse Act, offer stricter controls and updated definitions.
- The EU emphasizes preventive regulation, with laws like GDPR, NIS Directive, Anti-Money Laundering Directives, and Corporate Due Diligence Laws.

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<sup>11</sup> Financial Action Task Force (FATF), Guidance on Virtual Assets and VASPs, 2023.

- Australia integrates anti-fraud, anti-money laundering, and cyber security under coordinated frameworks, along with strong inter-agency protocols.

Furthermore, global regimes focus heavily on digital forensics, corporate transparency, inter-agency collaboration, and cross-border cooperation through treaties like the Budapest Convention and FATF guidelines. India's non-participation in key international conventions, limited data-sharing frameworks, and slow judicial redressal reduce enforcement effectiveness.

Globally, there is a greater emphasis on victim protection, public awareness, corporate compliance, and cyber hygiene education, whereas India remains largely enforcement-focused with weaker institutional capacity and low conviction rates in economic offenses.

To bridge this gap, India must pursue legal modernization, global treaty participation, digital enforcement capacity-building, and proactive regulatory reforms to match international benchmarks in tackling economic and cybercrimes.

### **Why cybercrimes are difficult to control**

Because of the distinct characteristics of the digital world, the rapid pace of technological development, and the numerous legal, technological, and social obstacles that are involved, controlling cybercrimes is significantly more difficult than controlling traditional crimes. Cybercrimes operate in an invisible and frequently anonymous realm, in contrast to physical crimes, which take place in visible areas and leave behind concrete evidence. A cybercriminal in one nation can easily launch an attack on a person, company, or organization thousands of miles away thanks to this virtual ecosystem's ability to transcend national borders. Because different countries have distinct legal frameworks, data privacy regulations, and procedural norms, the cross-border character of cybercrimes makes jurisdictional enforcement extremely difficult.

Obtaining cooperation from overseas service providers or collecting electronic evidence from foreign servers can frequently be a time-consuming and fruitless task. The secrecy and stealth with which cybercrimes are perpetrated is another important factor contributing to

their challenge in controlling. Criminals can conceal themselves online by using VPNs, proxies, phony accounts, and encrypted communication channels. Via sophisticated techniques like spoofing IP addresses, using anonymous browsers, or even taking over digital identities, cybercriminals conceal their identities, in contrast to physical crimes where suspects can be recognized by CCTV footage, fingerprints, or witnesses. Since many law enforcement agencies in poor nations like India still lack advanced cyber forensic capabilities, identification and attribution become exceedingly difficult due to the absence of identifiable digital identities.

In addition, the rapid pace of technological evolution outstrips law enforcement preparedness. New forms of cyber threats continue to emerge—ransomware, cryptojacking, deepfakes<sup>12</sup>, AI-driven phishing, and synthetic identity fraud—while security mechanisms, legal statutes, and institutional frameworks struggle to keep pace. The laws that govern cyber space often become outdated within a few years, but the process of legislative reform is much slower. For example, while India has made progress by introducing the Bharatiya Nyaya Sanhita (BNS) to replace colonial-era laws, even this framework must evolve continuously to address emerging forms of cyber risks.

Another significant obstacle is the lack of qualified technical staff, digital forensic specialists, and cybercrime detectives. Conventional crime detection and investigation training is still used by the majority of police departments and law enforcement organizations. Understanding coding, network security, data recovery, malware analysis, blockchain tracing, and digital evidence management are all necessary for cybercrimes, which call for a completely other set of abilities. Unfortunately, such infrastructure and technical training are still in their infancy in many parts of India, especially at the state and district levels. Even specialist cybercrime units frequently lack the staff and up-to-date equipment necessary to carry out effective investigations.

The absence of coordinated intelligence-sharing systems and inadequate interagency cooperation are two more fundamental problems. Numerous organizations, including central authorities, financial regulators, intelligence services, cyber cells, and law enforcement,

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<sup>12</sup> Supreme Court of India, *Shreya Singhal v. Union of India*, (2015) 5 SCC 1.

frequently operate in silos. The effectiveness of controlling cybercrime is sometimes weakened by duplication of effort, inadequate coordination, and delays in providing critical intelligence. In a similar vein, many organizations—particularly in the private sector—are hesitant to notify authorities of data breaches or cyber events for fear of harming their brand. This results in inadequate threat intelligence and underreporting, which makes it harder for the government to monitor changing trends in cybercrime.

Low public awareness and digital illiteracy exacerbate the situation, particularly in rural and semi-urban areas. Many people become victims of internet scams, phishing messages, and digital financial crime simply because they lack basic cyber hygiene skills. Victims frequently do not report such crimes, either out of embarrassment, a lack of legal knowledge, or a belief that the authorities will be unable to assist. Underreporting causes statistical data gaps, which undermines crime mapping and prevention initiatives.

Additionally, it is more difficult to preserve and present digital evidence in court because it is brittle and volatile. Electronic data may be inadmissible in a court of law for minor infractions, such as tampering with a hard drive or disregarding chain-of-custody procedures. Cybercrimes necessitate a high degree of accuracy and appropriate protocols during collection and preservation since they include intricate data trails. Unfortunately, critical evidence is frequently lost as a result of ignorance of such standards.

Last but not least, it is very challenging to seek justice for cross-border cybercrimes in the absence of strong and standardized international cooperation mechanisms. Even while multinational frameworks like the Budapest Convention on Cybercrime have seen some success, India is yet to sign. Cybercriminals continue to operate with impunity and take advantage of global loopholes in the absence of legally binding agreements for data sharing, extradition, and mutual legal aid.

### **What can be done?**

One of the most important issues of the twenty-first century is cybercrime, and India, a country whose economy is digitizing quickly, needs to take a proactive, multifaceted approach to combat it. A mix of law reforms, technology development, capacity training,

preventive awareness, and international collaboration, in addition to punitive enforcement, is the answer. Building a strong cyber security ecosystem requires addressing the underlying issues and structural flaws. India's cybercrime control systems can be greatly strengthened by implementing the following important changes and solutions:

### **1. Reinforcing Regulatory and Law Frameworks**

Modernizing cyber laws on a regular basis to handle changing online threats is one of the first measures. Although the Bharatiya Nyaya Sanhita (BNS), 2023, seeks to replace outdated legislation, India still needs specific, updated, and dedicated laws to handle emerging concerns like deepfake abuse, cryptojacking, dark web operations, and crimes powered by artificial intelligence<sup>13</sup>. To guarantee that it keeps up with technological advancements, the Information Technology Act of 2000, despite its importance, requires frequent modifications. Additionally, a more cohesive legal architecture will be produced by incorporating cybercrime measures into data protection legislation and financial regulatory frameworks.

### **2. The emergence of Specialized Courts for Cybercrime**

Establishing specialized cybercrime courts at the regional and district levels is important given the complexity of cybercrime crimes and the frequently protracted judicial proceedings. Judges with expertise in digital evidence appraisal and information technology legislation ought to rule over these courts. Such a step would guarantee quicker, better-informed adjudication of cyber-related disputes and offenses in addition to reducing pendency.

### **3. Improving Law Enforcement's Technological Capabilities**

Modern data analysis software, cyber tracking systems, and digital forensic technologies are essential for law enforcement organizations. Tracing encrypted trails, decoding ransomware assaults, and looking into cryptocurrency<sup>14</sup>-based money laundering are all too difficult for traditional police techniques. Thus, implementing blockchain analytic tools, AI, ML, and

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<sup>13</sup> R. Prakash, "Challenges in Combating Cryptocurrency Crimes in India," *Journal of Law and Technology*, Vol. 18, No. 2 (2023).

<sup>14</sup> National Crime Records Bureau (NCRB), *Crime in India: Cyber Crime Statistics*, 2022.

predictive threat monitoring systems can greatly improve the effectiveness and precision of investigations.

#### **4. Building Capacity and Providing Specialized Training**

The shortage of skilled labor is a significant weakness in India's cybercrime response. Regular training sessions, workshops, and certifications in cyber law, digital evidence management, cyber forensic analysis, and ethical hacking are essential for police officers, judges, and prosecutors. The training programs of organizations such as the National Police Academy, State Judicial Academies, and Bar Councils must incorporate cybercrime modules. Likewise, hiring cyber security experts for law enforcement should be given top priority.

#### **5. Encouraging Digital Literacy and Public Awareness**

In India, a lot of cybercrimes are committed as a result of ignorance and inadequate digital hygiene. Large-scale public education initiatives should be started, with a focus on students, the elderly, small business owners, and people living in rural areas. School and college curricula must include topics like phishing detection, safe browsing, password security, and secure digital payments. Digital safety courses, cyber awareness campaigns, and community policing models can all significantly reduce cybercrime at the local level.

#### **6. Enhancing Coordination Among Agencies**

The disarray between different regulatory and enforcement agencies is one of India's most enduring issues. The CBI, Enforcement Directorate (ED), RBI, CERT-In, SFIO, and state police forces are among the agencies that frequently function in silos. A centralized command structure for cybercrime cases, complete with real-time data interchange, shared intelligence platforms, and collaborative task forces, is necessary to guarantee an efficient response. Cross-functional collaboration is particularly important when economic cybercrimes are involved.

#### **7. The Private Sector and Digital Platforms**

Must Report Private companies, particularly those in the banking, e-commerce, and IT industries, should be required by law to promptly report cyber incidents and data breaches. Companies frequently suppress important facts out of fear of harming their reputation. Early detection and prompt response will be enhanced by a robust compliance framework and

incentives for collaboration. Through clear procedures, tech behemoths, telecom providers, social media firms, and finance platforms must also work with law enforcement.

### **8. Formation of Victim Redressal and Cyber Insurance Systems**

Cybercrime victims frequently lose money and their reputations without getting enough assistance or recompense. The government ought to support cyber insurance plans that give people and companies financial security. Institutionalizing victim counselling services, 24-hour helplines, and specialized grievance redressal procedures is also necessary. These systems will encourage more victims to report occurrences and aid in reestablishing public trust.

### **9. Enhancing International Cooperation**

Because most cybercrimes are international in character, India must strengthen bilateral and multilateral ties to facilitate intelligence exchange, collaborative investigations, and digital evidence recovery. Participating in agreements such as the Budapest Convention on Cybercrime and establishing Mutual Legal Assistance Treaties (MLATs) with major states can facilitate legal collaboration. Collaborative cyber drills, cross-border training, and the harmonization of cyber legislation across nations will all help to destroy global criminal networks.

## **Conclusion**

In India, the introduction of the Bharatiya Nyaya Sanhita (BNS), 2023, marks a promising step toward addressing these challenges with updated legal provisions and structured reforms. However, legislation alone is not enough.

This study has highlighted the multifaceted nature of economic and cyber offenses, ranging from financial frauds and money laundering to data breaches, identity theft, and digital scams. These crimes not only impact the financial ecosystem but also erode public trust, threaten national security, and exploit systemic loopholes. While the BNS has attempted to bring clarity and modernization to certain aspects, gaps in implementation, enforcement infrastructure, and inter-agency coordination continue to hinder progress.

A comparative glimpse into global legal frameworks reveals how much India still needs to evolve — especially in terms of international cooperation, technological readiness, preventive strategies, and victim-centric mechanisms. The need of the hour is a holistic and future-oriented approach that blends legal reforms with institutional strengthening, public awareness, and cross-border collaboration.

Ultimately, addressing modern criminal offenses is not merely a legal task but a societal imperative. As economic and digital landscapes continue to grow, so must our systems of accountability, protection, and justice. India's journey toward a more robust and resilient criminal justice system must be grounded in innovation, adaptability, and a commitment to upholding the rule of law in the face of ever-evolving threats.

## 2. INTEGRATING INQUISITORIAL ELEMENTS INTO THE INDIAN JUDICIARY: A PATH TO REDUCING INVESTIGATION DELAYS AND ENSURING SPEEDY TRIALS

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### **Abstract**

*The Indian judicial system, predominantly adversarial, faces a severe backlog of cases due to prolonged investigations and delayed trials, undermining the fundamental right to a speedy trial. The new Criminal law has brought several procedural time bound deadlines into the investigation as well as in the judgement delivery however there are still some improvements that are necessary for gathering the public trust on the fair and speedy disposal of the cases. This paper explores the feasibility of incorporating selective inquisitorial elements to enhance the efficiency of criminal justice delivery in India.*

*Unlike the adversarial system, where judges act as neutral arbiters, the inquisitorial model grants them an active role in fact-finding, ensuring more structured investigations and reducing procedural inefficiencies. Drawing insights from successful implementations in European nations, this study proposes a hybrid framework where judicial oversight is enhanced in the pre-trial and trial stages. Key recommendations include empowering judges with limited investigative authority, integrating judicial-led case management, streamlining evidence collection, and fostering greater collaboration between law enforcement and the judiciary.*

*By blending inquisitorial principles within the existing legal framework, the Indian judiciary can significantly reduce investigation delays, expedite trial proceedings, and uphold the constitutional mandate of fair and speedy justice. This reform-driven approach aims to strengthen public trust in the judicial process while ensuring a balance between efficiency and due process.*

**Keywords:** *speedy trial, adversarial system, fair trial, inquisitorial system, reforms in judiciary, Indian judiciary*

## **Introduction**

The Indian judiciary, despite its robust framework, has long been plagued by delays in investigations and trials, leading to a staggering backlog of over 5 crore pending cases.<sup>1</sup> The adversarial system, which India follows, places the burden of proof on the prosecution and relies heavily on the contest between opposing parties. While this system has its merits, it often results in prolonged trials, inefficiencies, and a lack of judicial oversight during investigations. To address these challenges, there is a growing call to integrate elements of the inquisitorial system, as followed in countries like France, Germany, and Japan, into the Indian judicial process. This article explores how such integration can reduce investigation delays, ensure speedy trials, and enhance the overall efficiency of the justice system.

## **Delays in the Adversarial System**

India's adversarial system, inherited from the British colonial era, is characterized by its reliance on the prosecution and defense to present evidence and arguments. While this system ensures a fair contest between parties, it often leads to significant delays. Investigations in India are often marred by inefficiencies, lack of resources, and corruption. The police, who are responsible for gathering evidence, are frequently overburdened and under-trained, leading to delays in filing chargesheets.<sup>2</sup> Judges in the adversarial system act as neutral arbiters and do not actively participate in evidence collection or witness examination. This can result in weak cases being presented in court, leading to acquittals or retrials.<sup>3</sup> The adversarial system places the entire burden of proof on the prosecution, which can lead to delays if the prosecution fails to gather sufficient evidence or if the defense employs delaying tactics.<sup>4</sup>

## **Integrating Inquisitorial Elements**

In the inquisitorial system operating in the continental countries of Europe, including the Soviet Union, the responsibility of a trial judge is to discover the truth. The judge is assisted by a judicial police officer, who submits the investigation to the concerned prosecutor who after making a thorough scrutiny of the case can move the judge to take over the responsibility of supervising the investigation of such a case. Since the investigation is undertaken under the guidance of the Judge, the entire investigation process takes minimum

time. The case is then forwarded to the trial judge or disposal of the case. The inquisitorial system, followed in countries like France, Germany, and Japan, offers a contrasting approach. In this system, judges play an active role in investigating facts, collecting evidence, and questioning witnesses. This system has several advantages that can address the shortcomings of India's adversarial system. In the inquisitorial system, judges take a proactive role in managing trials, ensuring that proceedings are conducted efficiently and without unnecessary delays.<sup>5</sup> By reducing the reliance on parties to present evidence, the inquisitorial system can expedite trials and ensure timely justice.<sup>6</sup> Judges in the inquisitorial system actively examine evidence and question witnesses, leading to stronger cases and higher conviction rates.<sup>7</sup>

### **A Quasi-Inquisitorial Model**

Japan's judicial system, which incorporates elements of the inquisitorial system, offers valuable lessons for India. In Japan, judges play an active role in trials, and the prosecution has significant discretion in deciding whether to charge a suspect. This has resulted in a conviction rate of over 99% and significantly faster trials.<sup>8</sup> Japanese prosecutors conduct thorough investigations before filing charges, ensuring that only strong cases proceed to trial.<sup>9</sup> Trials in Japan are conducted continuously, with limited adjournments, ensuring that cases are resolved quickly.<sup>10</sup> Japan promotes mediation and conciliation to resolve disputes outside the courtroom, reducing the burden on the formal judicial system.<sup>11</sup>

### **Recommendations from the Malimath Committee**

The Malimath Committee, formed in 2000, submitted its report in 2003 with comprehensive recommendations to reform India's criminal justice system. Many of its recommendations align with the principles of the inquisitorial system and provide a roadmap for integrating these elements into the Indian judiciary. The Committee recommended that judges play a more active role in trials, similar to the inquisitorial system, by examining evidence and questioning witnesses.<sup>12</sup> The Committee emphasized the need for time-bound trials and recommended the establishment of fast-track courts to handle cases involving serious offenses.<sup>13</sup> The Committee advocated for a victim-centric approach to justice, ensuring that victims are given a voice in the trial process and are provided with adequate compensation and support.<sup>14</sup> The Committee recommended the use of technology to improve the efficiency

of the judicial process, including the digitization of court records and the use of video conferencing for witness testimonies.<sup>15</sup>

### **239th Law Commission Report: Integrating Inquisitorial Advantages**

The 239th Law Commission Report (2012) also highlighted the need to integrate the advantages of the inquisitorial system into India's adversarial framework. The Commission suggested that judges should have greater oversight over investigations to ensure that they are conducted fairly and efficiently.<sup>16</sup> The Commission proposed a hybrid model that combines the best elements of both the adversarial and inquisitorial systems. This would involve judges playing a more active role in trials while maintaining the adversarial system's emphasis on the rights of the accused.<sup>17</sup> The Commission recommended the establishment of specialized courts to handle specific types of cases, such as commercial disputes and sexual offenses, to ensure expertise and faster resolution.<sup>18</sup>

### **Case Study: Ankush Maruti Shinde v. State of Maharashtra:**

The Ankush Maruti Shinde v. The State of Maharashtra case highlights the importance of judicial oversight in ensuring fair trials. In this case, the Supreme Court emphasized that the prosecution must prove its case beyond a reasonable doubt and that the accused cannot be convicted based on mere suspicion or weak evidence.<sup>19</sup> The Court's ruling underscores the need for a more active role for judges in examining evidence and ensuring that trials are conducted fairly and efficiently. The apex court held that a serious lapse on the part of the investigation agency which affects fair investigation and fair trial, is violative of Articles 20 and 21 of the Constitution.

### **Case Study: Vinay Tyagi v. Irshad Ali:**

The Vinay Tyagi v. The Irshad Ali case dealt with the limits of judicial intervention in criminal investigations. The Supreme Court held that once a chargesheet is filed, the court does not have the power to order a fresh investigation or re-investigation unless there are compelling reasons, such as gross negligence or bias in the original investigation.<sup>20</sup> This case highlights the need for greater judicial oversight during investigations to ensure that they are conducted fairly and efficiently.

## Conclusion:

Integrating elements of the inquisitorial system into India's adversarial framework offers a promising path to reducing investigation delays and ensuring speedy trials. By adopting a hybrid model that combines the strengths of both systems, India can address the inefficiencies in its judicial process and deliver timely justice to its citizens. Key steps which include Judges should play a more active role in trials, examining evidence and questioning witnesses to ensure that cases are conducted efficiently. Greater judicial oversight during investigations can ensure that they are conducted fairly and efficiently. Strict timelines should be imposed for the completion of trials, with the establishment of fast-track courts to handle serious offenses. Technology should be leveraged to improve the efficiency of the judicial process, including the digitization of court records and the use of video conferencing for witness testimonies. Specialized courts should be established to handle specific types of cases, ensuring expertise and faster resolution. By adopting these reforms, India can move closer to achieving a judicial system that is efficient, transparent, and accessible to all.

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### 3. OFFENCES AGAINST WOMENS UNDER BHARATIYA NYAYA SANHITA

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#### **Abstract**

*Against crimes pertaining to women and children, classes that are often at the receiving end of some of the most grievous offences, the legal architecture in India has seen considerable development. Bharatiya Nyaya Sanhita, part of new criminal law reforms enacted in India, represents a touchstone in the improving of protection through law for these vulnerable groups. The BNS is proposed to take the place of the Indian Penal Code that was enacted as early as 1860. Although it was all-inclusive, it did not provide adequate attention to specific and detailed issues faced by women and children in modern society. Most of the existing laws under the IPC were outdated and did not address the emerging crimes emanating from technological development, globalization, and shifting social dynamics. The BNS comes with fresh definitions and heavier punishments, reflecting the commitments of the government towards ensuring gender justice and protection of the child.*

**KEYWORDS:** 1. Bharatiya Nyaya Sanhita, 2. Historical Background, 3. Women, 4. Children  
5. Sexual Offences 6. Harassment, 7. Marriage-related offences 8. Dowry.

#### **Introduction**

In the present scenario, the violence and the increasing crimes against women is witnessed by everyone across the world in some or the other manner. It indicates the enormity and pensiveness of the monstrosity perpetrated against women in recent years. The global crusade for the decimation of violence against women is a proof to this fact. The changes in the living standards, lifestyle, imbalance in the economic growth, changes in social ethos and meager concern for the moral values contribute to a vicious outlook towards women due to which there is multiplication in crimes against women. Moreover, such incidents are a matter of

grave concern and its structure is absolutely necessary so that the women of India could live with respect, honor, dignity, liberty and peace in an atmosphere free from atrocities, denigration and heinous crimes. There are many legal provisions which punish the culprits' committing offences against women. The Indian Penal Code though, provides provisions for women as a victim of many crimes such as murder, robbery, theft, etc. but there are certain crimes which are diametrically characterized against the women known as 'Offences Against Women'. With the need of the hour, many new socio-economic offences have been enacted accompanied by various amendments in the existing laws with an objective to combat these crimes effectually.

### **Analysis Historical Background**

Historical Background of BNS and Crimes Against Women and Children Criminal laws in India, this essay is meant to raise the offenses against women and children under the BNS, highlighting how the law has sought to afford better protection through specific provisions, extension of certain legal concepts, as well as stricter mechanisms in its enforcement. It also attempts to discuss issues on sustained problems in the implementation of the Act, societal attitudes that still pose a hindrance to its perfect functioning, and what the future holds for the BNS in terms of ensuring justice and safety for women and children.

Basically BNS, were framed in the colonial period and represented the then socio-political realities. Although the BNS was monumental legislation, most of the provisions dealing with crimes against women and children have a limited scope. The BNS also did not fully represent the modern changes in society that were to come about, and the deluge of offences that attracted prominence over the past few decades, such as cybercrimes and organized rings trafficking children. In contrast, BNS was a law to meet the emergent needs of Indian society with greater completeness. It identifies as crimes stalking, voyeurism, and cyber bullying as falling disproportionately upon women and children. The BNS also provides for provisions that deal more with contemporary social and digital environments, thereby making the legislation better equipped to deal with new forms of exploitation.

Offences Against Women under the BNS Indeed, women have suffered from chronic discrimination and violence. These normally go unnoticed, as the patriarchal mindset is

deeply ingrained in Indian society. The BNS strengthens existing provisions pertaining to sexual violence, dowry harassment, and domestic abuse and aims toward an inclusive and supportive legal regime for women in their quest for justice.

### **Bharatiya Nyaya Sanhita, Chapter V, Of Offences Against Woman and Children of Sexual Offences**

Section 63 – Rape: The term sexual assault refers to sexual contact or behavior that occurs without explicit consent of the victim. Some forms of sexual assault include 1. Attempted rape 2. Fondling or unwanted sexual touching 3. Forcing a victim to perform sexual acts, such as oral sex or penetrating the perpetrator’s body 4. Penetration of the victim’s body, also known as rape BNS, Section 64–Punishment for Rape. Section 65–Punishment for sexual assault in certain cases. Section 66–Punishment for causing death or causing continuous mental distress to the victim. Section 67–Husband having sexual intercourse with his wife during separation. Section 68–Sexual intercourse by a person in authority. Section 69–Sexual intercourse using deceptive means. Section 70 – Gang rape.

#### **Rape and Marital Rape:**

For the first time, BNS brings progressive changes into the definition and prosecution of rape. It expands the definition of rape to include all forms of sexual violence. The BNS marks a landmark move in recognizing marital rape, one of the hottest debates heard in India. While the previous laws did not deem non-consensual sexual intercourse between spouses as a criminal offense, BNS has gone all the way to ensure that marriage will not be a protection for sexual assault. This shift represents an important stride toward recognition of women's autonomy and bodily integrity, regardless of their marital status *State v. Ram Singh and Another (Nirbhaya Rape Case)*, 2013 In this case, the deceased victim, a 23-year-old female was brutally raped and tortured in a moving bus by six men including a minor. The victim was tortured to such an extent that she was not only raped but her intestines were pulled out of her body and her genitals were damaged. After raping her, she along with her male friend who was deeply wounded and unconscious while trying to save her were thrown out of the moving bus in a winter night on the roads of Delhi, naked. Out of them, one committed

suicide in jail and rest were hanged to death. Further, the accused who was a minor was sent to a reform facility for three years.

### **Amendment after the Nirbhaya Case, 2013:**

The main change brought by 2013 amendment after the Nirbhaya Case in the section 375 is that in the ingredients of rape 'sexual intercourse' is no longer a requirement. Oral sex, anal sex, inserting any part of the body or any object into the part of the women's body would suffice as the physical act required to reveal the offence of rape. The age of statutory rape is now 18. Before the amendment there were only six circumstances which revealed rape but 7th circumstance has been added that is 'when she is unable to communicate her consent'. New categories were added in the list of enhance form of rape. Punishments for the various sections of sexual offences have also been made stricter and for rape most of the time punishment leads to life imprisonment.

Various other forms of offences have been added after this amendment. There were no specific provisions mentioned for these offences before this amendment. These offences are:

**Section 74:** Assault or Criminal Force to Woman with intent to outrage her modesty.

**Section 75:** Sexual Harassment and Punishment for Sexual Harassment.

**Section 76:** Assault or use of criminal force to women with intent to disrobe her.

**Section 77:** Voyeurism.

**Section 78:** Stalking, Section 66: Punishment for causing death or persistent vegetative state due to rape.

### **Section 124(1): Acid Attack**

The above-mentioned offences have been discussed below at their suitable places.

### **Laxmi vs. Union of India and Others [2014 4 SCC 427]**

In this case, Lakshmi, who was merely 16-years-old, suffered from an acid attack. The cause of this attack was a refusal to a marriage proposal. After this case, the Supreme Court formulated new guidelines. As per the guidelines, acid should strictly not be sold to anyone

who is below the age of majority. A photo identity proof was mandated for those who wanted to purchase acid.

### **Criminal Coercion and Assault against a Woman**

**Section 74:** Assault or criminal coercion with intent to outrage the modesty of a woman.

**Section 75:** Sexual harassment.

### **Sexual Harassment and Assault**

Without question, one of the most important changes within the BNS relates to the inclusion of a much broader definition of sexual harassment and assault. In other words, the BNS builds on the base of the Vishaka Guidelines that, though at first designed to prevent sexual harassment, extends from worksites to public spaces, educational institutions, and digital platforms. Besides, sexual assault has been extended in its definition to include non-penetrative sexual acts, thereby bringing more forms of violence under the ambit of law. The Sanhita takes into consideration other heinous crimes, such as voyeurism, stalking, and other forms of gender-based cybercrime, considering that women are ever-more vulnerable in digital space.

### **Relevant Sections**

**Section 76:** Assault or criminal coercion with intent to remove the modesty of a woman.

**Section 77:** Voyeurism.

**Section 78:** Stalking.

**Section 79:** Word, gesture or act intended to outrage the modesty of a woman.

### **Aman Kumar vs. State of Haryana [AIR 2004 SC 1497]**

In this case, the act of pulling a woman, removing her dress coupled with a request for sexual intercourse, is such as would be an outrage to the modesty of the woman and knowledge that modesty is likely to be outraged is sufficient to constitute the offence without any deliberate intention having such outrage alone for its object.

### **Ritu Kohli Case**

Ritu Kohli case was the first case of cyberstalking in 2001, she reported against Manish Kathuria who was stalking her on the internet. The IT Act had not come into force then. He was arrested under section 509 of IPC. This led to an amendment in the IT Act, 2008, section 66A was introduced.

### **Rupan Deol Bajaj vs. K.P.S. Gill [(1995) 6 SCC 194]**

In this case, the act by the accused of slapping on the posterior of the lady I.A.S officer in the presence of a gathering comprising the elite of the society when considered in the light of sequence of events involving overture, words used and gestures made, prima facie amounted to commission of offence under section 509.

### **Marriage-Related Offences**

Section 80 - Dowry death.

### **Dowry-Related Offences**

Dowry-related offences have long constituted a blot on Indian society. The Dowry Prohibition Act enacted in the year 1961 criminalized the practice but turned it into an act that was just in name, as this law has been particularly poorly enforced. Dowry-related violence continues to kill dozens of women. The BNS has increased the punishment for dowry deaths and extended the ambit of protection in the case of harassment of women. Under the Sanhita, dowry deaths are treated with greater severity, with provisions for fast-track legal proceedings and harsher sentences for offenders. Apart from that, the BNS is also demanding special courts that would address dowry-related violence so there will be efficiency in handling such cases sensitively for the victims.

### **Shanti vs. State of Haryana [AIR 1991 SC 1226]**

It was held that death by drowning, by poisoning, due to burns, by hanging, by strangulation etc. are the instances of abnormal circumstances of death of a woman. If it takes place within the seven years of her marriage, where the death is unnatural, it is not important whether it was caused due to suicide or homicide and Section 304B will be attracted in either case.

### **Pradeep Kumar Dey and others vs. State of West Bengal, 2015**

In this case, the accused persons-husband and the parents-in-law allegedly killed the deceased for non-fulfillment of dowry demand by setting her on fire. There was evidence of brother of the deceased that the deceased was tortured for money. The fact that no one was at home when the parents of the deceased went to her house and the dead body was lying all alone also showed cruel behaviour of the in-laws towards the deceased. Accordingly, the court held that the husband and parents-in-law are liable to be convicted under Section 498-A of the Indian Penal Code.

### **Offences against a Child**

**Section 93:** Exposure and abandonment of a child under the age of twelve by a parent or person having custody of the child.

**Section 94:** Concealment of birth by secret disposal of a dead body.

**Section 95:** Hiring, employing or engaging a child to commit an offence.

**Section 96:** Purchase of a child.

**Section 97:** Kidnapping or abducting a child under the age of ten years with intent to steal from its person.

**Section 98:** Selling a child for the purposes of prostitution, etc.

**Section 99:** Buying a child for the purposes of prostitution, etc.

### **Child Trafficking**

It is another ongoing problem in India, and it shows how children are trafficked for various activities such as prostitution, hard labor, and even for adoption. BNS gives harsher punishment for child trafficking and enlists rehabilitation measures for survivors. The SAS suggests that the Sanhita should have stringent laws against trafficking rings, coordination among various state and national agencies for cross-border trafficking. SAS also advocates sheltering and rehabilitation systems that help victims get back into society.

### **Child Labour and Forced Begging**

BNS tightens the law in relation to child labor, particularly in hazardous industries. It introduces heavy fines on employers for hiring children for banned jobs and provides for rescue and rehabilitation of child workers. Sanhita addresses the beggary syndicates operating through children and sees that the offenders are dealt with the maximum possible legal punishment.

### **Amendments to the IPC**

The IPC has been amended several times to strengthen laws protecting women, such as after the 2012 Nirbhaya gang-rape case, which led to more stringent punishments for rape and sexual assault.

### **Other Laws**

In addition to the IPC, other laws like the Protection of Women from Domestic Violence Act, 2005, and the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013, provide further protection and recourse for women facing various forms of abuse and harassment.

### **Protection and Recourse**

These provisions help define and penalize various forms of violence, abuse, and exploitation faced by women, ensuring their safety and dignity in society.

### **Cyber Crimes Against Children:**

The Internet, as popularly used, is increasingly exposing children to the dangers of cybercrime, including online sexual exploitation and harassment, cyber bullying, and exposure to objectionable content. BNS consolidates the existing sections under the Information Technology Act by making exploitation or abuse of a minor through any digital means a criminal offense. The Sanhita further demands tighter monitoring of the online platforms and hence makes it mandatory for the companies to implement safeguards so that children may be protected from online predators.

### **Challenges in Implementation**

Despite this set of progressive changes brought about by the BNS, challenges in implementation remain. Indian society is deeply patriarchal, and crimes against women and children mostly go underreported due to societal stigma and fear of retaliation. Law enforcement agencies and the judiciary are more often than not not suitably trained to deal with sensitive cases, and delays in the judicial process ensure that victims are burdened for a long period. - Judicial and Law Enforcement Issues: One of the major reasons for poor handling of cases pertaining to women and children is the very absence of gender sensitivity training for police officers and judicial personnel. The BNS requires that training programs be instituted for law enforcement and the judiciary to ensure that cases falling under such categories are handled in a sensitive manner. These training programs, however, have to be laid down in all regions, particularly in rural areas where such crimes mostly go unnoticed.

### **Offences Against Children under the BNS**

The vulnerability of children to various forms of abuse, exploitation, and neglect renders them prone to stringent legal protections. The BNS integrates and strengthens the existing laws like the Juvenile Justice Act, POCSO Act, and Child Labour (Prohibition and Regulation) Act so as to fully establish a child-protective regime. Child Sexual Abuse and Exploitation: BNS will also provide extended protections from child sexual abuse based on the POCSO Act. This would include a wider definition of abuse that will cover online grooming, digital exploitation, and other non-physical forms of hurt, like exposure to inappropriate content. The Sanhita explores how to establish child-friendly courts and child friendly procedures so that victims are not re-victimized at the time of the trial. The BNS further demands the establishment of a safe place, along with psychological counseling and accompanying services for children who have survived abuse.

### **Societal Attitude**

The patriarchal attitudes and blame attributions to victims remain some of the major barriers in the adequate practice of legislation on protection for women and children. The BNS realizes that to change the society is as crucial as changing the laws, and greater awareness raising with the public must be there through campaigns to eradicate misogynistic attitudes.

Public awareness campaigns are necessary to create a paradigm shift in thinking related to gender-based violence and crimes committed against children.

### **Crimes Against Women and Children Given Precedence Under BNS**

In the Bharatiya Nyaya Sanhita (BNS), 2023, for the first time, the provisions relating to crime against woman and child have been given precedence and placed under one Chapter. Strict punishments up to death sentence have been provided for the offences against women. Punishment for gang rape of a woman below the age of 18 years is life imprisonment till remainder of the convict's natural life or death. A new offence for having sexual intercourse on false promise of marriage, employment, promotion or by concealing identity, etc. has also been incorporated in BNS. Main provisions related protection of woman in the new Criminal Laws are given in Annexure.

The Government is committed to prevention and countering of the crime of human trafficking. Section 143 of the BNS, 2023 provides provisions for strict punishment up to life imprisonment for offence of human trafficking. Where the offence involves the trafficking of a child, it shall be punished with imprisonment not less than 10 years, but which may extend to imprisonment for life, and fine. 'Beggary' has been introduced as a form of exploitation for trafficking and is punishable under section 143 of the BNS, In addition, section 144 (1) of the BNS provides for strict punishment for the offence of sexual exploitation of trafficked children. The minimum punishment for such offences is five years extendable to life imprisonment.

### **Provisions for protection of Women and Children:**

- i. Offences against woman and child have been given precedence over all other offences in a new Chapter-V of BNS.
- ii. Various offences against women and children have been made gender-neutral in BNS, covering all victims and perpetrators regardless of gender.
- iii. In BNS, the age differential for minor victims of gang rape has been done away with.

iv. Women have been recognized as an adult member of family who can receive summons on behalf of the person summoned.

v. In order to provide more protection to the victim and enforce transparency in investigation related to an offence of rape, the statement of the victim shall be recorded through audio video means by police.

vi. For certain offences against woman, statement of the victim is to be recorded, as far as practicable, by a woman Magistrate and in her absence a male Magistrate in the presence of a woman to ensure sensitivity and fairness, creating a supportive environment for victims.

vii. Medical practitioners are mandated to send the medical report of a victim of rape to the investigating officer within 7 days.

viii. It is provided that no male person under the age of fifteen years or above the age of 60 years (65 years earlier) or a woman or a mentally or physically disabled person or a person with acute illness shall be required to attend at any place other than the place in which such male person or woman resides.

ix. The new laws provide for free first-aid or medical treatment to victims of crimes against women and children at all hospitals.

## **Conclusion**

Notwithstanding the number of laws to protect and safeguard the rights and interest of the women, the rate of crime against women and victimization is mushrooming day by day. It is well said that it takes two to tango. It implies that only laws are not responsible to regulate and control the augmentation of the crimes against women in our society. The suppression of evil eyes on women and inculcation of social ethics, morals and values, respect and honor in every human being towards women is the need of the hour and is a supplement factor that can equally contribute in reducing the number of crimes against women, However, there is an exigency of more strict and stringent laws so that any person intending to commit such crimes couldn't screw up the courage to act in furtherance of his intention.

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#### 4. A COMPARITIVE STUDY ON TRESPASS TO PERSON UNDER THE LAW OF TORTS AND BHARATIYA NYAYA SANHITA.

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#### ABSTRACT

*This study examines the tort of trespass to the person, a fundamental area of common law protecting individual bodily integrity and liberty. It explores the historical development of this tort, its core element (assault, battery, and false imprisonment), and the evolving legal principles governing case laws to illustrate the application of these principles in various factual scenarios, including the use of force, the scope of consent, and the impact of modern technological advancements. Furthermore, the study considers the defences available in trespass to the person claims, such as self-defence and lawful authority. It also investigates the remedies available to victims of trespass, including damages for physical and emotional harm. Finally, the study evaluates the continuing relevance of trespass to the person in contemporary society, considering its role in safeguarding individual rights and deterring unlawful interference with personal autonomy.*

**Keywords:** *Assault, False imprisonment, battery, Defences, Remedies, Habeas Corpus, Damages.*

## INTRODUCTION

Trespass was the oldest writ that provided a remedy for various torts. An unlawful interference with a property or space of a person. Trespass is considered any wrongful act or conduct that directly causes injury or harm to a person or property. A trespass is an injury committed with violence, and the violence may be either actual or implied; and the law will imply violence, though none is actually used, where the injury is of a direct and immediate kind, and committed on the person or tangible and corporeal property of the plaintiff. <sup>1</sup>Trespass gives the party that was aggrieved, the right to bring a civil complaint and collect damages as compensation for the intrusion and for any harm suffered. It is an intentional tort and, in some circumstances, can be punished as a crime. <sup>2</sup>The unreasonable and direct interference of a person over the rights of another person or property, without lawful justification and knowledge of the owner is called Trespass. Trespass is considered a civil and criminal wrong as it can cause injury, i.e., violation of legal rights, and also damage to a person and property considerable if a physical attack takes place. For instance, if X enters the house of Y, without his knowledge and permission, Y can be held liable for trespass.

### TYPES OF TRESPASS:

As Trespass is an intentional tort and it is further classified into three, trespass to person, land and goods.

**a). Trespass to land:** Trespass to land refers to unlawful interference over the property of a person without lawful justification. Trespass to land should be a direct interference, but not consequential. Trespass to land is committed in three situations, entering into the land of plaintiff, by continuing to stay on the land even after being asked to leave by the owner after the permission has come to an end, and, trespassing by the interference with the land of another person.

**b). Trespass to goods:** Trespass to goods mean the interference with the goods by a person who are in possession of other, without any lawful justification. Trespass to goods is considered as wrong against the possession of goods. As observed in *Abdul Subhan case*<sup>3</sup>

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<sup>1</sup> Ratan Lal and Dhirajlal, *the law of Torts*, <<https://archive.org/details/ratanlal-dhirajlal-the-law-of-torts>>

<sup>2</sup> B.M. Gandhi, *Law of Tort* (Eastern book Co 1987)

<sup>3</sup> K.M. Abdul Subhan Vs. S. Ramaiah, AIR1952MYS90

trespass on goods in an unlawful disturbance of the possession of the goods by seizure or removal by a direct act causing damage to goods.

**c). Trespass to person:** Trespass to a person signifies a violation of an individual's rights and liberties without any legal justification. Trespass to a person arises in the case when there is an apprehension of harm or injury to a person. There should be wrongful apprehension by a person of causing harm or injury to the body of another person, which is done with mala fide (bad faith or dishonest intent) intention in trespass to a person. There are three types of trespass to a person such as assault, battery and false imprisonment.

### **TYPES OF TRESPASS TO A PERSON:**

Trespass to a person can be further classified into three types which are,

- 1) Assault
- 2) Battery and
- 3) False Imprisonment

### **D). ASSAULT**

An assault is the unlawful laying of hands on another or an attempt to do a corporal hurt to another coupled with present ability and intention to do the act. For example, A advances to B in a threatening manner to use force upon him. Here A commits assault. A is in a heated argument attempts to strike B but stops it at the neck of the moment, here, it is an assault. <sup>4</sup>Assault is thus an inchoate battery. According to section 130 of the <sup>5</sup>Bharatiya Nyaya Sanhita, 2023, defines the term assault as, whoever makes any gestures, or any preparation intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault. In explanation, mere words do not amount to an assault. But the words which a person uses may gibes to his gestures or preparation such a meaning as may make those gestures or preparations amount to an assault. In assault, a person is put in a fear of violence. Mere verbal threat is not assault. The person committing

<sup>4</sup> B. Venkata Surya Rao V. N. Muthayya (1963) 2 An WR 403: AIR 1964 AP 382: ILR 1964 AP 1021.

<sup>5</sup> New Criminal Laws CRIMINAL MANUAL, (Criminal Major Acts), Dr. B. Ramaswamy, Professional Book Publishers, Delhi, 2024.

the assault must have the present ability. For instance, a child cannot be guilty of assault, because though the child may have the intention to commit assault, it has no present ability to commit assault.

## ESSENTIALS OF ASSAULT

There are three essentials to constitute assault:

**a). *There must be some gesture or preparation constitutes the threat of force:*** Mere words (even threatening) do not amount to assault if there is no possibility that the assault can be carried out. When the defendant by his act creates an apprehension in the mind of the plaintiff that he is going to commit battery against the plaintiff, the wrong of assault is completed. The wrong consists in an attempt to do the harm rather the harm being caused thereby. The case that establishes the principle in tort law is *Stephens Vs. Myers*<sup>6</sup>, where the defendant's act of raising a clenched fist towards the plaintiff during a meeting was considered a sufficient gesture to constitute an assault, even if no physical contact was made. He was held liable for assault.

**b). *Such wrong doer must have the present ability and intention to cause harm:*** it is essential that there should be prima facie (at first sight or on the face of it) ability to do harm. If the threat is shown from such a distance that it cannot be executed, there is no assault. In such case there can be two elements mens rea and actus reus are two fundamental elements of criminal law. Mens rea refers to the mental state of a person committing a crime, while actus reus refers to the physical act of committing a crime. Likewise in the case of *R Vs. S. George*<sup>7</sup>, where A points an empty gun towards X. If A knows that the gun is not loaded, But B does not know it, then a commits the Tort of Assault. But if he is a lunatic or an unsound minded person it may not be taken into account, like in case of *Morris Vs. Marsden*<sup>8</sup>, Morris was assaulted by a lunatic called Marsden. It was proved that Marsden knew the nature and quality of his tortuous act and hence he was held liable for damages but if it was a case of unintentional and unknowingly done it was not an offence.

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<sup>6</sup> (1830) 4 C&P 349.

<sup>7</sup> (1840) 9 C&P 483

<sup>8</sup> (1952)1 ALL ER 925

*c). Such gesture or preparation must cause reasonable fear of violence:* Mere verbal threat is no assault unless it created reasonable apprehension in the plaintiff's mind that immediate force will also be used. For instance, in the case of *Bavisetti Venkata Surya Rao Vs. Nandipati Muthayya*<sup>9</sup>, the plaintiff owed a certain amount to the defendant which he was unable to pay so the defendant in order to collect the amount thought of selling some movables from the plaintiff's house. A goldsmith to evaluate the value of gold was called by the defendant. The court held that the defendant only called a goldsmith and evaluated the gold and did nothing, they were not liable for assaults. So in this case there was nothing related to the violation so there exists no assault.

## II). BATTERY

Battery is the intentional application of force to another, without lawful justification, it is the attempt and threat carried out into action. It consists in touching another's person hostilely or against his will however slightly. It is the least touching of another in anger, rudely, violently, insolently, in a revengeful inordinate manner. Battery is an assault consummated or completed. Physical contact is necessary to accomplish battery. Battery constitutes to bring any material object into contact with another person intentionally. For instance, spitting on the face of a person, throwing over a chair or carriage in which another person is sitting throwing water over a person, striking a horse so that it bolts and throws its rider, taking a person by the collar, causing another to be medically examined against his will or firing a gun carelessly and hitting another are all held to be battery.

### ESSENTIALS OF BATTERY:

*a). There should be intentional use of force or it should includes touching a person in a rude and angry manner*<sup>10</sup>: Even though the force used is very trivial and does not cause any harm, the wrong is still constituted. Physical hurt need not be there. Even, least touching of another in is a battery, if the same is without lawful justification. The force may be used even without a bodily contact with the aggressor. Mere passive obstruction, however, cannot be considered as the use of force. *Stephens Vs. Myers*<sup>11</sup>, in this case as said before in the assault there was an intention but no harm. According to the witness, it seemed to that that the

<sup>9</sup> AIR 1964 AP 382; ILR 1964 AP 1021

<sup>10</sup> Usha Jaganathan, Law of Torts.

<sup>11</sup> (1830) 4 C&P 349.

defendant had an intention to strike the chairman but was stopped in the mid-way, it turned out to be a assault. Use of a stick, bullet or any other missile or throwing of water or spitting in a man's face or making a person fall by pulling his chair are examples of use of force. Infliction of heat, light, electricity, gas, odour, etc. would be a battery if it can result in physical injury or personal discomfort. As in *Stanley Vs. Powell*<sup>12</sup>, the member of the shooting party, fired a bullet in a shooting pheasant which glanced off the tree and accidentally wounded Stanley, it was held that Powell was not liable. If the act is willful or negligent, the defendant would be liable.

**b). Without Lawful Justification**<sup>13</sup>: It is essential that the use of force should be intentional and without any lawful justification. If two or more persons meet in a narrow passage and without any violence or design of harm, the one touches the other gently, it will be no battery. But if either of them uses violence against the other, to force his way in a rude or inordinate manner, it will be a battery. Harm voluntarily suffered is no battery. The use of force may also be justified in pulling a drowning man out of water, forcibly feeding a hunger-striking prisoner to save his life, or performance of operation of an unconscious person by a competent surgeon to save the former's life. Harm which is unintentional or caused by pure accident is also not actionable. *Pratap Daji Vs. B.B. & C.I. Ry.*<sup>14</sup>, if the force of removal was used if the plaintiff was a trespasser of a wrongdoer, then the defendant is not liable.

### COMPARISON BETWEEN ASSAULT AND BATTERY:

As distinguished from battery, assault does not need to involve actual contact: it only needs intent to make or threaten contact; it only needs intent to make or threaten contact and the result apprehension. In assault motion is necessary but application of force is not complete, but in battery, motion is necessary and application of force is complete. Physical contact is not necessary in assault but in battery without any physical contact it cannot be termed as Battery. Mere fear of physical violence is enough for assault, but for Battery fear of physical violence and application of unlawful force are necessary is necessary. In other words, an incomplete battery is said to be assault. According to Sir Winfield's example, when a person

<sup>12</sup> *Stanley Vs. Powell*, 1 QB 86 (1891)

<sup>13</sup> Trespass to a person: assault, battery and false imprisonment by Pragya Agrahari, Amity University, 2021.

<sup>14</sup> *Pratap Daji Vs. B.B. & C.L. Ry.*, 1875 (1) Bom 52

pulls away a chair when another is about to sit on it, it is an assault till the moment he reaches the floor. But as soon as he comes into contact with the floor, it is battery.

## DEFENSES TO AN ACTION OF ASSAULT AND BATTERY

**Assault and Battery may be justified in the following cases:**

*a). Self Defence:* It is technically known as ‘**Son Assault Demesne**’<sup>15</sup>. The plea of self-defence is available against the offenders of one’s body, the body of one’s wife, children, parents and others. Any assault or battery committed in the course of self-defence is not a tort. But the following two conditions must be fulfilled: Self-defence was the only remedy available to such person. The force used must be proportionate as the prevent the harm to be inflicted. For example, hitting a man with a small stick must not be rather for cutting him with a sword.

*b). To prevent a forcible entry or seizure of chattels:* The lawful owner of a property can prevents others from making a forcible entry of from making a forcible seizure goods. If the lawful owner exercises reasonable forces, it does not amount to assault or battery. As per the case in *Sitaram Vs. Jaswant Singh*<sup>16</sup>, an occupier is entitled to expel a trespasser and if necessary, even forcible remove him from the premises.

*c). Ejection of trespasser:* A person entering into the premises or land of another, against the owner’s will or without his consent, with force or violence, may be ejected without previous notice to him and by using necessary force. What is necessary force is a question of fact to be decided by the court. *Pratap Daji vs. Bombay, Baroda and Central India Rly and Timothy Vs Simpson*<sup>17</sup> are the leading cases in this regard explaining that force may be used against a trespasser to eject him and the same should be reasonable. In the first case the plaintiff who failed to purchase a ticket by oversight entered a railway carriage and on detection was asked to leave the carriage and on detection was asked to leave the carriage top which he refused. He was forcibly removed therefor. It was held that he being a trespasser the use of necessary force to remove him was justified. Similarly in Timothy case where a customer in a shop insisted on having the goods sold to him at the wrong price marked thereon, the shopkeeper was justified to use force to expel him when a request the customer refused to leave.

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<sup>15</sup> Known as self defense in French. It’s used when a defendant claims that the plaintiff attacked them, and the defendant only used force to defend themselves.

<sup>16</sup> (1951)NagLJ477

<sup>17</sup> Timothy V. Simpson (1835)149 E.R. 1285

*d). Lawful correction by parents and others:* Chastisement to a pupil by a teacher, to a wife by a husband, to a child by a parent and an apprentice, or sailor on board a ship or a soldier by the captain, all being for a lawful correction is saved from assault and battery if it is reasonable. As observed in *Unni case*, this right is incapable of an exhaustive identification. To limit it within defined confines would be to erode into teacher's authority and fetter his discretion. To deny this right would be to sound the death-knell of discipline in the institution.

*e). Service of legal process and preservation of public peace:* On the same principle of use of reasonable force, assault and battery may be justified on the ground that they were committed in serving a legal process or in preservation of public peace or in the words of Salmond when the defendant was acting in support of the law.

## **REMEDIES:**

### *Civil and criminal remedies*

Assault and battery are civil wrongs as well as crimes. It follows therefore that besides civil remedies, a criminal prosecution may be launched. These civil and criminal remedies may be pursued concurrently or successively, one being no bar to the other in India unlike England. However, once punished, the defendant cannot be punished for a second time. In case of deliberate and wanton assault substantial and exemplary or vindictive damage can be awarded. Burden to prove assault and battery lies on the plaintiff. In awarding damages defendant's status can also be considered. A minor is generally liable for torts in the same manner and to the same extent as an adult<sup>18</sup>. As observed in *Kidar Nath case*<sup>19</sup> damages vary according to circumstances of each case. For example, it is a greater insult to be beaten in a public than in a private room. In cases of extreme forms of assault and group assaults, maiming, crippling or wounding prisoners in jail by police officers, damages may be substantial, exemplary.

## **III). FALSE IMPRISONMENT:**

<sup>18</sup> Swarup Kishore V. Gover Dhandas, AIR 1956 MB 84 (Minor slapping the plaintiff in presence of several persons in his own shop)

<sup>19</sup> Kidar Nath V. Ranji, (1881) 1 Awn 131

False imprisonment consists in the imposition of a total restraint for some period, however short upon the liberty of another, without sufficient lawful justification. Such a restraint may be either physical force or by mere show of authority. When a person is deprived of his personal liberty, whether by being confined within the four walls or by being prevented leaving the place where he is, it is false imprisonment. The best definition of false imprisonment is that expressed in *Onkarmal case* which says that in order to amount to a false imprisonment what is essential is that there must be a total restraint, for howsoever short a time, on the liberty of person, without lawful justification and actual imprisonment in a jail is not necessary. The definition is based, as it seems, on the famous dictum of Paterson. J in *Bird Vs. Jones*<sup>20</sup>, a leading English case. False imprisonment is:

*The infliction of bodily restraint, which is not expressly or impliedly authorised by law. 'False' means erroneous or wrong and 'imprisonment' is the restraint of a man's liberty whether it be in the open field or in the stocks or cage in the street, or in man's own house, as well as in the common goal. And in all these places the party so restrained is said to be a prisoner, so long as he hath not his liberty freely to go at all times to all places whether he will, without bail*<sup>21</sup>.

## EXPLANATION

No man may imprison another without due process of law is a principle accepted universally and especially in all democracies. Article 21 of the Constitution of India has therefore envisaged and afforded protection to life and personal liberty of a person<sup>22</sup>. The tort of false imprisonment touches not only the liberty of the subject but also trenches on his dignity and reputation. The expression personal liberty includes a variety of rights, for example: i) the right of locomotion ii) the right to travel or move out of India and to return, and iii) the right to privacy. The right to personal freedom and it contemplates and encompasses therefore the immunity not only from the actual application of force but also from detention and unauthorised restraint<sup>23</sup>, which go to constitute this tort. The gist of the action lies in the

<sup>20</sup> (1845) 7 QB 742: 115 ER 668; Weir, Case book (3<sup>rd</sup> Edn. 1974) at pp. 274-75

<sup>21</sup> Winfield, Law of Torts (9<sup>th</sup> Edn. 1971) at P.35

<sup>22</sup> In COI, Art. 21: No person shall be deprived of his life or personal liberty except according to the procedure established by law.

<sup>23</sup> In COI, Art. 22 ensure that no person can be arrested or detained without being informed of the grounds for which arrest or detention.

interference with the right of liberty rather than the threatened or actual contract; and the actual damages does not have to be proved. It is the restraint of one's liberty without any sufficient legal excuse therefor by words or acts which the victim fears to disregard and neither malice, ill will, nor the slightest wrongful intention is necessary to constitute the offence. If civilization is not to perish in this country as it has perished in some others, too well known to suffer mention, it is necessary to educate ourselves into accepting that respect for the rights of individuals is the true bastion of democracy<sup>24</sup>.

### **ELEMENTS OF FALSE IMPRISONMENT:**

The essential requirements to constitute this wrong are as under: i) there must be a restraint: a) actual (i.e. physical) or b) constructive (i.e. by mere show of authority)- on a person's liberty, ii) the restraint must be total as distinguished from partial, iii) the restraint must be against the plaintiff's will, and iv) it must be unjustified or unreasonable.

**a). Restraint:** In *Bird Vs Jones*<sup>25</sup>, a leading case on the topic, "prison" and "false imprisonment" have been explained. In this case a part of the bridge which was used as a footway was occupied for viewing a boat race and the plaintiff insisted upon passing along the part so appropriated. He tried to climb over the enclosure and the defendant pulled him back. However, he succeeded in climbing over. As a result of these two police men were stationed there to prevent the plaintiff from passing onwards in the direction he wished to proceed. The plaintiff was told to use the carriageway and to proceed to other side of the bridge if he liked but he refused to do so and remained there for about half an hour. On his suing the defendant for false imprisonment the court observed that in general if one man compels another to stay in any given place against his will may amount to imprisonment. But I cannot bring to my mind the conclusion that, if one man merely obstructs the passage of another in particular direction, whether by threat of personal violence or otherwise, leaving him at liberty to stay when he is or to go in any other direction if he pleases, he can be said thereby to imprison him. Restraint on a person's liberty is a crime too; it may be a wrongful restraint or wrongful confinement as described by the Section 127 of the Bharatiya Nyaya Sanhita (BNS), which deals with the offense of "wrongful confinement" or may be known as

<sup>24</sup> Per Chandrachud, CJ in *Rudul Sah V, State of Bihar* (1983) 4 SCC 141.

<sup>25</sup> (1845) 7 QB 742: 115 ER 668; Weir, *Case-book*(3<sup>rd</sup> edition 1974) at P.275

wrongful restraint which essentially covers the concept of false imprisonment; it outlines the punishment for wrongfully restraining someone in a manner that prevents them from moving freely beyond certain limit. An aggravated species of the crime is kidnapping and probably every kidnapping is a false imprisonment<sup>26</sup>. The restraint on a person's liberty must be total; partial restraint is no imprisonment. It may be for howsoever short a time, but total restraint is imprisonment. In partial restraint the means of escape must be known, and reasonable. One cannot jump from a moving car.

**b). Plaintiff's Awareness not a necessary element:** A question must be posed as to whether plaintiff awareness or consciousness about his confinement is must? Or whether there is any liability to confine a person who is asleep or when he is asleep or in a state of lunatic or in drunkenness. In this regard there are two decided cases holding opposite views. One is *Herring Vs. Boyle*<sup>27</sup> and the other is *Meering Vs. Grahame-White Aviation Co. Ltd*<sup>28</sup>. In the first case a 10-year-old boy was detained in his hostel and was not allowed to go to his house as his fees were unpaid. The action for false imprisonment failed as it was not proved that the boy had such knowledge. In the second case a boy suspected of stealing a keg of vanish was taken to his employer's office and was kept there waiting in the waiting room. Sometimes later the police arrested him. In an action of false imprisonment, it was held that the plaintiff's detention by the officers of the company before the arrival of the police was wrongful and amounted to false imprisonment. This was so because of the fact that of his being wrongfully detained did not make much difference and anxious to make him believe that he is not in fact being imprisoned, and at the same time his captors outside the room may be boasting to a person that he is imprisoned. Thus a person could be imprisoned without his knowing it. Therefore, plaintiff's knowledge of his imprisonment is not an essential element of the tort. Cases of *Gouri Prasad, Raja P.V. Naidoo, Velji Bhimsey and Santda Idanmal* afford good examples of unreasonable or false restraint.

## DEFENCES:

As contemplated by the Code of Civil Procedure (CPC) a person who has committed an offence can be arrested. Such an arrest may be either by a private person or by a police

<sup>26</sup> Walker, The Oxford Companion to Law (1980) at p.458

<sup>27</sup> (1834)1 Cr M&R 377: 149 ER 1126; 6 C&P 496.

<sup>28</sup> (1919) 122 LT 44 (CA); Cracknell's L.S.C. (4<sup>th</sup> edn, 1974)at p.74 (367)

officer. The defences open to the person arrested may be succinctly laid down as under. He may prove that: There was only partial restraint and other reasonable and practicable ways of escape were open to the plaintiff which he could have made use of. The situation created was as a result of the agreement between the plaintiff and the defendant to which the principle of *Volenti non fit injuria* was applicable. He did not cause the arrest of the plaintiff, The detention was lawful and take refuge under the judicial Officer's Protection Act, 1850. If he is an executive officer, he has to prove the justifiability or lawfulness or his action as per the powers given to him by a statute.

### REMEDIES:

The following remedies are open to the person arrested:

**a). Self-help:** A person while under detentions authorised to use reasonable force in order to escape from the imprisonment instead of awaiting his release and a legal action thereafter. What amount of force is necessary or allowable and what means he should employ to release himself are questions the answers to which depend upon the facts and circumstances. In short if a person is unlawfully imprisoned, he need not wait till he is released by legal action. He can use reasonable force to escape.

**b). Damages:** after release the plaintiff can file an action for damages. He is entitled to recover general damages for the imprisonment and special damages by way of compensation for any expenses incurred to regain freedom. The plaintiff is entitled to recover general damages for any expenses incurred to regain freedom and the humiliation suffered.

**c). Habeas Corpus:** the writ of habeas corpus is a constitutional remedy for procuring the release of a wrongfully arrested person. The remedy of this writ is the speediest remedy contemplated by law. The High Court issues such a writ under Article 226 and the Supreme Court under Article 32 of the Constitution of India ordering the person detaining to produce before the court the arrested person and justify the detention, or else, he be released. This is the purpose of the writ which would be fruitful only when the delays in disposal of cases are lessened because justice delayed amounts to denied. In *Sebastain M. Hongary Vs. Union of*

*India*<sup>29</sup>, the State was ordered to pay compensation of Rs. 1 lakh for each person disappearing. Death of suspected people taken into police custody due police torture-assault, battery and false imprisonment-are increasing and the courts do award compensation in such cases.

### **TRESPASS TO A PERSON AS A COMMON LAW IN TORT AND CRIME IN BNS<sup>30</sup>:**

Trespass is a in tort is based on common law principle, where common law is meant to be unwritten laws based on legal precedents whereas in Bharatiya Nyaya Sanhita, all assault, wrongful confinement, battery are considered to be a crime. Basically, in the law of torts there'll be compensations and in BNS there'll be fine and imprisonment that is punishments. Trespass to a person protects an individual's right to bodily integrity and personal liberty whereas, in Bharatiya Nyaya Sanhita also addresses offenses that correspond to the concept of trespass to person. The BNS does not have direct provisions as of in the false imprisonment is addressed as wrongful confinement in Section 126, of BNS,2023. The batter is addressed in on voluntarily causing hurt (Section 115) and use of criminal force (Section 131) in a way or other Section 115, also constitutes assault if there was no hurt. The BNS provisions tend to focus on the use of force or criminal intent whereas in the common law tort may cover a wide range of intentional interferences. As both are not the same, tort is a common law and BNS is a statutory law both serves to protects the individual rights and bodily integrity.

### **CONCLUSION**

Trespass to a person is general tort which is faced in our day-to-day life. People suffer a lot of difficulties because of these acts but due to unawareness they don't file suits of trespass to these interferences. In fact, in Indian society people are so much unaware of their rights that they go on facing problems without protesting. In contrast to these the American society is co litigant society that people file suits even for minor trespass case also. Since the body of every person is inviolate any person doesn't have the right to interfere with the body of an individual wither directly or indirectly. The foundation of the tort of trespass to a person lies in the element of intention. In the absence of intention, a cause of action for negligence may

<sup>29</sup> Sebastian. M Vs. Union of India, (1984) 3 SCC 82 (Disappearance of a person), also, Delhi Judicial Services Assn Vs. Gujarat State, (1991)4 SCC 406.

<sup>30</sup> Bharatiya Nyaya Sanhita, 2023.

arise instead. Due to the prevalent confusion surrounding the distinction between trespass to a person and negligence, individuals frequently find themselves initiating legal proceedings inappropriately. Thus, it is crucial to possess the ability to discern which actions encompass the tort of trespass. This paper explored the concept of trespass clearly outlining the types of trespass, and further explaining the types of trespass to person in detailed manner with the related case laws.

## 5. JUDICIAL INTERPRETATION OF THE BHARATIYA NYAYA SANHITA, 2024: AN ANALYSIS OF NEW PROVISIONS

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### ABSTRACT

*The Bharatiya Nyaya Sanhita, 2024 (BNS), marks a transformative shift in India's criminal justice framework. By replacing the Indian Penal Code, 1860, and associated legislations, the BNS introduces substantial novel provisions that reshape procedural aspects, offense definitions, and sentencing guidelines. This paper investigates the prospective challenges and opportunities confronting the judiciary in interpreting and applying these new provisions. It focuses particularly on identifying areas necessitating judicial activism and the concomitant need for judicial restraint.*

*The BNS encompasses significant reforms, including the reorganization of offenses, a revised framework for bail, and an emphasis on restorative justice mechanisms. The redefinition of existing crimes, such as culpable homicide, and the introduction of new offenses will require meticulous judicial examination to ensure coherence with established legal principles and constitutional protections. Modifications to bail provisions, which could potentially affect the presumption of innocence, will necessitate nuanced judicial interpretation to prevent arbitrary application and safeguard fundamental rights. The judiciary's role in shaping the practical effect of the BNS will be paramount. Judicial interpretation will be instrumental in clarifying ambiguous provisions, resolving inconsistencies between sections, and setting precedents for future adjudication. Courts will be tasked with harmonizing legislative intent with constitutional mandates, ensuring that the new law does not impinge upon fundamental rights, such as the right to a fair trial and the presumption of innocence. It will also compare the BNS with repealed legislation to underscore significant shifts in judicial approach and their implications for criminal justice administration in India. Ultimately, this research aims*

*to provide a framework for understanding the evolving criminal justice landscape under the BNS and its consequential impact on the rights and freedoms of Indian citizens.*

**KEYWORDS:** *Bharatiya Nyaya Sanhita, Court, Indian Penal Code, Interpretation, Judicial*

## **INTRODUCTION**

India's legal landscape has undergone a significant transformation with the enactment of the Bharatiya Nyaya Sanhita (BNS), 2024, replacing the colonial-era Indian Penal Code (IPC), 1860. This comprehensive overhaul aims to modernize the criminal justice system, align it with contemporary societal values, and address lacunae in the existing legal framework. The BNS introduces several new provisions, redefines existing offenses, and modifies procedural aspects of criminal law. However, the mere enactment of a law is insufficient to ensure its effective implementation and just application. The judiciary plays a pivotal role in interpreting the provisions of the BNS, giving them practical meaning, and ensuring their application aligns with the principles of justice, equity, and good conscience. This paper delves into the crucial role of judicial interpretation in shaping the application and impact of the Bharatiya Nyaya Sanhita, 2024, with a specific focus on the analysis of new provisions and their potential ramifications.

### **A. OVERVIEW OF THE BHARATIYA NYAYA SANHITA, 2024**

The Bharatiya Nyaya Sanhita, 2024, represents a paradigm shift in India's criminal law jurisprudence. The legislation seeks to address contemporary challenges in crime prevention and adjudication, reflecting the evolving nature of criminal activities and societal expectations. Some of the key changes introduced by the BNS include the reclassification of offenses, the introduction of new offenses, enhanced penalties for certain crimes, and a greater emphasis on the use of technology in criminal investigations and trials. For instance, provisions related to offenses against women and children, such as sexual harassment, stalking, and child pornography, have been strengthened to provide better protection to vulnerable sections of society. Similarly, the BNS addresses emerging forms of crime, such as cybercrime and organized crime, by introducing specific provisions to deal with these

offenses effectively.<sup>1</sup> Furthermore, the BNS seeks to streamline the criminal justice process by incorporating provisions for plea bargaining, compounding of offenses, and the use of electronic evidence to expedite trials and reduce the backlog of cases in courts. This overhaul of the criminal law framework necessitates a careful and nuanced understanding of the new provisions and their potential implications for various stakeholders.<sup>2</sup>

## **B. OBJECTIVES OF THE RESEARCH PAPER**

This research paper aims to analyze the judicial interpretation of the Bharatiya Nyaya Sanhita, 2024, with a specific focus on the new provisions introduced by the legislation. The primary objective of the paper is to examine how the judiciary has interpreted these provisions in the initial stages of their implementation and to assess the potential impact of these interpretations on the criminal justice system.<sup>3</sup> Specifically, the paper will analyze the judicial pronouncements on key provisions of the BNS, such as those related to offenses against women and children, cybercrime, organized crime, and economic offenses. It will also examine how the judiciary has addressed issues related to the admissibility of evidence, the burden of proof, and the rights of the accused in the context of the new provisions. Furthermore, the paper will explore the potential challenges and opportunities that judicial interpretation presents for the effective implementation of the BNS. By analyzing the judicial interpretation of the BNS, the paper aims to provide a nuanced understanding of the legislation's impact on the criminal justice system and to identify areas where further clarification or reform may be necessary.

## **HISTORICAL CONTEXT OF JUDICIAL INTERPRETATION IN INDIA**

### **A. EVOLUTION OF LEGAL FRAMEWORKS PRECEDING THE BHARATIYA NYAYA SANHITA**

The history of legal frameworks in India is a long and layered one, stretching back to ancient times. The earliest legal systems were rooted in Dharmaśāstras and Arthaśāstras, which

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<sup>1</sup> Mishra, S.N. "Sentencing Discretion and Judicial Activism in Criminal Law." 42 *Journal of the Indian Law Institute* 367-388(2000).

<sup>2</sup> Rai, Usha. "Victim's Rights in Criminal Justice System in India." 4 *The Bihar Journal of Law and Governance* 1-15 (2015).

<sup>3</sup> Sukumar Ray, "Digital Justice and Access to Justice," 62 *Journal of the Indian Law Institute* 100-115 (2020).

provided ethical and practical guidelines for governance and social order. These texts, however, lacked a unified and codified structure in the modern sense. During the Mughal era, Islamic law, particularly the Hanafi school, held sway, influencing criminal justice and administrative practices. The significant shift occurred with the arrival of the British, who introduced common law principles through a process of codification. This began with the Charter Acts and culminated in landmark legislation such as the Indian Penal Code (IPC) of 1860, the Criminal Procedure Code (CrPC) of 1861, and the Indian Evidence Act of 1872. These colonial-era laws formed the backbone of the Indian legal system for over a century, shaping judicial interpretation and practices even after independence<sup>4</sup>. They were instrumental in creating a framework for a more formalized and predictable application of justice, albeit one rooted in British legal philosophy and societal norms.

## **B. THE ROLE OF THE JUDICIARY IN ENFORCING JUSTICE**

The judiciary in India plays a multifaceted role in enforcing justice, acting as the guardian of the Constitution and the protector of individual rights against state overreach. Its primary function includes adjudicating disputes between individuals, between individuals and the state, and between different levels of government. This adjudicatory role demands impartiality, fairness, and adherence to the principles of natural justice. Beyond resolving conflicts, the judiciary interprets the law, providing clarity on its meaning and application. This interpretive power is crucial, especially in a society with evolving social norms and technological advancements. Furthermore, the judiciary possesses the power of judicial review, enabling it to examine the constitutionality of laws passed by the legislature and actions taken by the executive. This power serves as a check and balance on the other branches of government, ensuring that they act within the bounds of the Constitution. By actively engaging in these various functions, the Indian judiciary ensures the enforcement of justice, upholding the rule of law and maintaining a stable and equitable society.<sup>5</sup>

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<sup>4</sup> Pillai, P.S. Atchuthen. "Principles of Statutory Interpretation."12 Journal of the Indian Law Institute 1-20 (1970)

<sup>5</sup> Nath, Trilok. "Organized Crime in India: A Study of its Dimensions and Control."30 Indian Journal of Criminology & Criminalistics 1-20 (2009)

### **C. SIGNIFICANT CHANGES FROM PREVIOUS LEGAL PROVISIONS**

The BNS brings about several noteworthy changes from the Indian Penal Code. The renaming of offenses is significant, reflecting a movement away from colonial-era terminology. The redefined offense of "acts endangering sovereignty, unity and integrity of India" is narrower in scope than the previous section on sedition, potentially limiting its misuse. The introduction of specific provisions addressing organized crime and terrorism fills a crucial legislative gap, providing law enforcement with clearer legal tools to combat these threats. Stricter penalties are prescribed for certain offenses, particularly those related to sexual violence, signaling a stronger deterrent. Furthermore, the BNS introduces a more structured classification of offenses and a more rational arrangement of sections, aiming to improve the clarity and accessibility of the law.<sup>6</sup>

### **D. IMPORTANCE OF THE SANHITA IN THE INDIAN LEGAL SYSTEM**

The Bharatiya Nyaya Sanhita, 2024 plays a pivotal role in reshaping the Indian legal system. By modernizing the criminal law framework, it aims to enhance the efficiency and effectiveness of the justice delivery system. Its focus on contemporary crime, like cybercrime and organized crime, demonstrates a commitment to addressing emerging challenges. The emphasis on victim rights and compensation reflects a commitment to restorative justice. The BNS seeks to uphold the rule of law, protect the rights of citizens, and ensure a fair and just society. Its success will depend on its effective implementation by law enforcement agencies, its fair application by the judiciary, and its understanding and acceptance by society.<sup>7</sup> The impact of the BNS extends beyond the courtroom, shaping public perceptions of justice and fostering a more secure and law-abiding environment.

### **JUDICIAL INTERPRETATION MECHANISMS**

The process of judicial interpretation is fundamental to ensuring that the BNS is applied fairly, consistently, and in accordance with the principles of justice. Courts employ various methods of interpretation to ascertain the true meaning and intent of the legislative

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<sup>6</sup> Dhavan, Rajeev. "On Reading Down and Judicial Invention." Public Law 641-667 (1986).

<sup>7</sup> Mani, V.S. "The Indian Penal Code: A Critical Review of its Offenses." 22 Journal of the Indian Law Institute 1-30 (1980).

provisions. These methods range from a strict adherence to the literal meaning of the text to a more liberal approach that considers the purpose and context of the law. Understanding these mechanisms is essential to anticipating how the BNS will be applied in practice.

### **A. DIFFERENT METHODS OF INTERPRETATION USED BY COURTS**

Courts utilize a variety of methods to interpret statutes, each with its own strengths and limitations. Two prominent methods are literal and purposeful interpretation.

- **Literal Interpretation:** This approach emphasizes the plain and ordinary meaning of the words used in the statute. The court's primary duty is to give effect to the language of the law as it is written, without adding or subtracting anything. This method is favored for its objectivity and predictability, as it minimizes judicial discretion. However, literal interpretation can sometimes lead to absurd or unjust results if the language is ambiguous or if the literal meaning clashes with the overall purpose of the law.<sup>8</sup> For example, if a provision in the BNS states that "any person who causes grievous hurt shall be punished," a literal interpretation would focus solely on the definition of "grievous hurt" and the act of causing it, without considering the intent or surrounding circumstances.
- **Purposeful Interpretation:** Also known as the teleological approach, this method focuses on the underlying purpose or object of the statute. Courts adopting this approach seek to ascertain what the legislature intended to achieve by enacting the law and interpret the provisions in a way that furthers that objective. This method allows for greater flexibility in interpreting ambiguous provisions and can prevent the law from being applied in a manner that defeats its purpose. Purposeful interpretation involves examining the legislative history, the social and economic context of the law, and the potential consequences of different interpretations<sup>9</sup>. For instance, if the BNS introduces a new provision aimed at curbing cybercrime, a purposeful interpretation would consider the legislature's intent to address the specific threats posed by online

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<sup>8</sup> Khan, Mohammad Shabbir. "Restorative Justice: An Overview." 49 *Journal of the Indian Law Institute*: 105-120 (2007).

<sup>9</sup> Gaur, K.D. "Victimology: The Indian Perspective." 37 *Journal of the Indian Law Institute* 337-358(1995).

activities and interpret the relevant provisions in a way that effectively combats such crimes. This may involve looking beyond the literal meaning of the words to understand the technical aspects of cybercrime and the methods used by offenders.

## **B. ROLE OF PRECEDENTS AND THEIR INFLUENCE ON JUDICIAL DECISIONS**

Precedents, or past judicial decisions, play a crucial role in shaping the interpretation and application of laws. The doctrine of stare decisis obligates courts to follow the principles established in previous cases, particularly those decided by higher courts within the same jurisdiction. This ensures consistency, stability, and predictability in the legal system. Precedents provide guidance on how similar provisions have been interpreted in the past and how they should be applied in future cases. However, precedents are not always binding, and courts have the power to distinguish or overrule prior decisions if they are deemed to be incorrect, outdated, or inapplicable to the specific facts of the case. The hierarchy of courts is important in precedent; decisions of the Supreme Court of India are binding on all lower courts, while decisions of High Courts are binding on subordinate courts within their respective states. If the BNS introduces a new definition of a crime, courts will likely rely on precedents related to similar offenses under the previous law (IPC) as a starting point.<sup>10</sup> However, they will also need to consider the specific language and intent of the BNS provision to determine whether the existing precedents are applicable or whether a new interpretation is required.

## **C. IMPORTANCE OF CONTEXT AND EVOLVING SOCIETAL VALUES**

The interpretation of laws cannot occur in a vacuum; it must be informed by the social, cultural, and economic context in which the law operates. Courts must consider the prevailing societal values and norms when interpreting the BNS to ensure that the law remains relevant and responsive to the needs of the people. This is particularly important when dealing with provisions that involve moral or ethical considerations, such as those related to sexual offenses, personal liberty, or freedom of expression. Evolving societal values can influence how courts interpret and apply the BNS, leading to changes in the meaning and scope of legal provisions over time. For example, the concept of marital rape has been a subject of ongoing

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<sup>10</sup> Sharma, B.R. "Terrorism and Criminal Law in India." 44 *Journal of the Indian Law Institute* 1-25 (2020)

debate and legal interpretation in India.<sup>11</sup> While it is not explicitly criminalized in the BNS, courts may consider evolving societal attitudes towards marital rape and the right to bodily autonomy when interpreting other related offenses, such as those involving assault or coercion within a marital relationship. Additionally, the increasing use of technology and social media has created new challenges for the criminal justice system. Courts will need to consider the impact of technology on crime and the need to protect individual rights in the digital age when interpreting provisions related to cybercrime, data privacy, and online speech.

## **NEW CRIMINAL OFFENSES AND PENALTIES**

The BNS introduces several new offenses, demanding judicial scrutiny to define their scope and application. For example, the law criminalizes acts of organized crime and terrorism more explicitly than the previous Indian Penal Code (IPC). Courts will need to determine the precise boundaries of "organized crime" and "terrorist acts," considering the potential for overlap with existing legislations and ensuring that these provisions are not used to stifle legitimate dissent or protest.<sup>12</sup> Furthermore, the BNS introduces new penalties for certain offenses, like enhanced punishment for mob lynching. Judges will need to develop guidelines for applying these enhanced penalties, considering factors such as the severity of the crime, the culpability of the accused, and the potential for rehabilitation.<sup>13</sup> The interpretation of these new offenses and penalties will require a delicate balance between protecting public safety and safeguarding individual liberties. Judicial pronouncements will clarify the burden of proof, the admissibility of evidence, and the permissible scope of investigation in relation to these new offenses, ensuring fair trial principles are upheld.

### **A. PROVISIONS RELATED TO VICTIMS' RIGHTS**

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<sup>11</sup> Sarkar, Lotika. "The Indian Penal Code: Should it be Amended?" 13 Economic and Political Weekly 1305-1308 (1978).

<sup>12</sup> Kumar, Prabhash Ranjan. "Reforming Criminal Law in India: Some Reflections on the IPC Reforms Committee Report." 4 Indian Law Review 87-103 (2022).

<sup>13</sup> Menon, N.R. Madhava. "Criminal Justice Reforms: Towards a People-Centric System." 14 NLSIU Law Review 1-25 (2002)

The BNS places a greater emphasis on victims' rights, including the right to information, compensation, and participation in criminal proceedings. The judiciary will be instrumental in giving practical effect to these rights. For instance, the law envisions a more proactive role for courts in ensuring victims receive adequate compensation. Judges will need to develop mechanisms for assessing the quantum of compensation, considering factors such as the victim's physical and emotional suffering, economic loss, and need for rehabilitation. Moreover, interpreting the scope of victim participation in criminal proceedings will be crucial. Courts will need to determine the extent to which victims can influence investigation, prosecution, and sentencing decisions,<sup>14</sup> while ensuring the process remains fair to the accused. Judicial interpretation will also be needed to clarify the interplay between victims' rights under the BNS and other relevant laws, such as the Witness Protection Scheme and the National Legal Services Authority Act.

## **B. CHANGES IN THE PROCEDURAL FRAMEWORK**

The BNS brings about changes in the procedural framework of criminal trials, particularly regarding the use of technology and digital evidence. Courts will need to develop clear guidelines for the admissibility of digital evidence, including electronic records, video recordings, and social media posts. This will involve addressing issues such as authentication, integrity, and chain of custody of digital evidence<sup>15</sup>. The BNS also promotes the use of video conferencing in criminal trials. The judiciary will need to establish protocols for conducting virtual hearings, ensuring that the accused's right to a fair trial is not compromised. Furthermore, changes in the procedures for recording confessions and examining witnesses will require judicial clarification.<sup>16</sup> The interpretation of these provisions will be crucial for ensuring that the criminal justice system is both efficient and fair in the digital age.

## **C. INNOVATIVE APPROACHES TO BAIL AND SENTENCING**

The BNS encourages innovative approaches to bail and sentencing, with a focus on rehabilitation and restorative justice. Courts will need to interpret these provisions in a way

<sup>14</sup> Anand, Madhavendra Singh. "Revisiting Sedition Law in India: Balancing State Security and Freedom of Expression." 51 *Journal of Constitutional and Parliamentary Studies* 1-25(2015)

<sup>15</sup> Jain, M.P. "Statutory Interpretation in India." 17 *Journal of the Indian Law Institute* 269-300(1975).

<sup>16</sup> Singh, Mahendra Pal. "The Mischief Rule Today." 20 *Statute Law Review* 165-183(1999).

that promotes individualized sentencing and reduces overcrowding in prisons. For instance, the law allows for community service as an alternative to incarceration in certain cases. Judges will need to develop guidelines for identifying suitable candidates for community service, determining the appropriate type of service, and ensuring its effective implementation. Similarly, the BNS promotes the use of probation and other rehabilitative measures.<sup>17</sup> Judicial interpretation will be needed to clarify the conditions under which probation can be granted, the role of probation officers, and the consequences of violating probation terms. The judiciary will also need to balance the need for deterrence and retribution with the goal of rehabilitation, ensuring that sentencing decisions are proportionate to the crime and serve the best interests of both the offender and the community.

#### **D. ANALYSIS OF COURT DECISIONS ILLUSTRATING NEW PROVISIONS**

Analyzing court decisions regarding the application of specific new provisions is vital. For example, the BNS introduces changes to the penalties for certain offenses and modifies the criteria for determining culpability in cases involving specific circumstances. An analysis of court decisions will illuminate how judges are applying these changes. This will include examining how courts are interpreting the "intent" requirement for offences, whether the altered burdens of proof are being applied effectively, and the consistency in sentencing decisions under the new provisions. Further, analysis will also focus on any challenges that practitioners and courts may encounter while interpreting and applying the new sections.<sup>18</sup>

#### **E. TRENDS OBSERVED IN JUDICIAL REASONING AND OUTCOME**

Observing the trends in judicial reasoning is imperative to assess the overall impact of the BNS. Are courts interpreting the new provisions narrowly or broadly? Are they adopting a literal or purposive approach? A trend toward stricter or more lenient interpretations can significantly influence the perceived fairness and effectiveness of the new law. Examining the outcomes of cases, including conviction rates and sentence lengths, will shed light on the

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<sup>17</sup> Haksar, Nandita. "Sedition and Dissent in India." 44 *Social Scientist* 3-24(2016)

<sup>18</sup> Bakshi, P.M. "Statutory Interpretation: Some Aspects." 27 *Journal of the Indian Law Institute* 1-15(1985).

practical consequences of the BNS.<sup>19</sup> Comparing these outcomes with pre-existing data from the Indian Penal Code will aid in understanding the overall effect of the legal changes. Ultimately, these trends will highlight the strengths and weaknesses of the BNS, facilitating necessary adjustments and contributing to a more just legal system.

## **COMPARATIVE ANALYSIS WITH PREVIOUS LEGAL FRAMEWORKS**

### **DIFFERENCES IN INTERPRETATION AND APPLICATION BNS AND IPC**

The transition from the IPC to the BNS presents several key differences in interpretation and application. Firstly, the BNS often provides more detailed definitions of offenses compared to the IPC. This may lead to a narrower interpretation by courts, focusing on strict adherence to the statutory language. Secondly, the BNS emphasizes technology-related crimes. Interpretation will require grappling with the nuances of cyber offenses, data privacy, and digital evidence, potentially drawing upon established principles of statutory interpretation while adapting them to the digital realm.<sup>20</sup>

Moreover, the BNS seeks to address procedural gaps that previously existed. The courts will need to determine how these new procedures interact with existing constitutional rights and principles of natural justice.

### **CHALLENGES IN INTERPRETATION OF NEW PROVISIONS**

#### **A. AMBIGUITIES AND VAGUENESS IN THE TEXT:**

The BNS, like any legislative document, is vulnerable to inherent ambiguities and vagueness in its language. This poses a significant challenge for judicial interpretation. If a provision lacks clarity, judges must look beyond the literal meaning and consider the legislative intent, the broader context of the law, and principles of statutory interpretation. This can lead to varying interpretations and create uncertainty in the application of the law.<sup>21</sup> For example, a

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<sup>19</sup> P. Singh, "Environmental Offenses in the Bharatiya Nyaya Sanhita, 2024: Protecting the Planet," *Environmental Law Journal* (2024)

<sup>20</sup> Rao, S. "The BNS and the IPC: A Comparative Study of Key Provisions." *19(2) Criminal Law Journal*, 67-82.(2023)

<sup>21</sup> "The Role of the Judiciary in Implementing the BNS". *44 Indian Bar Review*, 2024

poorly defined term related to cybercrime could result in inconsistent prosecution and adjudication across different jurisdictions.

### **B. RESISTANCE FROM TRADITIONAL LEGAL PRACTICES:**

The Indian legal system is deeply rooted in established practices and procedures. The introduction of the BNS, with its new provisions and altered structures, may encounter resistance from legal professionals accustomed to the IPC. This resistance could manifest in a reluctance to embrace new interpretations or a preference for relying on familiar precedents derived from the pre-existing legal framework.<sup>22</sup> Overcoming this inertia requires comprehensive legal education and training programs to familiarize lawyers and judges with the nuances of the BNS.

### **C. POTENTIAL CONFLICTS WITH EXISTING LAWS AND STATUTES:**

While the BNS replaces the IPC, it is not the sole legislative instrument governing criminal law in India. Numerous other statutes, both at the central and state levels, address specific offenses and procedures. The introduction of the BNS may create potential conflicts with these existing laws. Courts will be required to resolve these conflicts by applying principles of statutory interpretation, such as the principle of harmonious construction, to ensure that the various legal provisions work together coherently. Failure to address these conflicts could lead to legal uncertainty and inconsistent application of the law.

### **CONCLUSION**

The judicial interpretation of the Bharatiya Nyaya Sanhita (BNS) is poised to be a transformative process, fundamentally shaping the landscape of Indian criminal law. As the judiciary grapples with the BNS's novel provisions, the principles of statutory interpretation will be rigorously tested in the context of modernizing and indigenizing centuries-old legal doctrines. The need to reconcile the BNS's innovative changes with the vast body of precedents established under the IPC will be a central challenge. Courts will be tasked with elucidating ambiguities, defining the contours of new offences, and ensuring that the BNS's implementation aligns with constitutional guarantees and fundamental rights. The initial

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<sup>22</sup> “The Future of Criminal Justice in India: The BNS and Beyond”. 32 *Journal of Contemporary Legal Studies*, 25-70 (2024)

judicial pronouncements on the BNS will set crucial precedents, influencing the direction of criminal jurisprudence for decades. Ultimately, the success of the BNS in fostering a more effective, just, and contemporary criminal justice system rests significantly on the wisdom, foresight, and principled approach of the Indian judiciary in interpreting and applying this landmark legislation. Their interpretations will not only define the legal parameters of the BNS but also its societal impact and its contribution to the pursuit of justice in India.

**6. THEME: LEGAL ASPECT OF BHARTIYA NYAYA SANHITA AND ITS  
IMPACTS ON THE INDIAN CRIMINAL JUSTICE SYSTEM.**

**TOPIC:- HISTORICAL EVOLUTION AND NEED FOR BHARATIYA NYAYA  
SANHITA (BNS)**

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**Abstract**

*The BNS was introduced to repeal the Indian Penal Code, 1860 (IPC) and to consolidate and amend the provision relating to the offences. The BNS strikes a balance between over-criminalisation and decriminalisation, some of the general offences, such as offences against human body and the state, still find their way in the BNS. It consists of 358 enumerated under 20 chapters. The BNS consolidated the scattered provisions from the IPC, reducing the number of sections from 511 to 358.*

*The Legislature felt to introduce BNS, 2023 in view of changes occurred in the society i.e. transgender, housebreaking after sunset and before sunrise, an offence for abetment who, without and beyond India, abets the commission of any act in India, punishment for offence of rape its age and consent, gender discrimination, new offence of Mob Lynching and its punishment, economic offence, offence of terrorist acts and its punishment, increased punishment for negligent and rash act not amounting to murder community service as new form of sentence, So also, punishment of imprisonment for life has been clearly defined as imprisonment for remainder of a person's natural life.*

*Keeping up with the need for change, offences under various provisions, such as the section 377, section 124-A, section 309 of the IPC do not find any place. Now, it has tremendous challenge before court of law as to enforcement of its new provisions introduced in statute with view to era of digitalization. The paper would be helpful to academician, students and legal luminaries.*

## **Introduction**

The Indian criminal justice system had its shares of ups and down on the road to evolution and development. From no developed branch of criminal law in the primitive society to king's administration of justice to application of Mohammedan criminal law with the invasion of Muslims. It was with the entry of Britishers, that India got improvements in the administration of criminal justice system. In 1834, the East India Company established an Indian Law Commission, headed by Thomas Babington Macaulay, a British Colonialist, Member of Parliament, for the creation of a Penal Code. After the preparation of the Draft, suggestions were sought and the Bill for the IPC was passed on 06-10-1860, which came into force on 01-01 1862. The object of the act was to provide a general penal code for India. The title of the IPC, itself indicated its punitive nature. The word 'penal' emphasized punishing those who commits offences.

Law has a dynamic nature and in the past 100 years, the nature and the method of crimes and criminals have seen a dramatic and drastic change which became the major push for the Parliamentarians to replace the colonial era criminal laws. As necessities felt by legislature, the statute of Bharatiya Nyaya Sanhita (BNS) was introduced to repeal the IPC and to consolidate and amend the provisions relating to the offences. The BNS strikes a balance between over- criminalisation and de-criminalisation, some of the general offences, such as offences against the human body and the State, still find their way in the BNS.

### **Key changes brought by Bharatiya Nyaya Sanhita 2023**

Keeping up with the need for change, offences under various provisions, such as the Section 377, Section 124-A, Section 309, of the IPC do not find any place. Offences such as hit and run matters, have been recognised, embarking a positive move under Section 106 of the BNS and the punishment is enhanced to 10 years. It consists of 358 provisions enumerated under 20 chapters. The BNS consolidates the scattered provisions from the Indian Penal Code (IPC), reducing the number of Sections from 511 to 358. Such as, offences against women and children have been brought together under Chapter-V, simplifying the legal framework. The issue of complicated and scattered provisions under the IPC has been resolved. For say, Chapter 5 of the BNS consolidates the offences related to women and children at one place,

which were previously scattered under 4 separate chapters of the IPC. The present BNS is the Sanhita of a layman, which can be easily understood.

- In IPC, there was no definition clause. All the interpretation clauses were spread over from sections 8 to 52A of IPC
- The definition of ‘section’ in section 50 of IPC stands omitted by BNS. Most of these interpretation clauses in sections 8 to 52A of IPC, 1860 have been retained in BNS without any change and have been compactly grouped in section 2 of BNS in alphabetical dictionary sequence for ease of reading and reference.
- The applicability of interpretation clauses in sections 8 to 52A of IPC, except definitions in sections 9, 32 and 46, were not made subject to contextual requirements.

#### **A) Child [Section 2(3) of BNS]**

- Section 2(3) of BNS defines ‘child’ to mean any person below the age of 18 years. Court [Section 2(5) of BNS/Section 20 of IPC] Omission of illustration
- Illustration below section 20 of IPC referring to “Regulation VII, 1816, of the Madras Code” has been omitted from the definition in section 2(5) of BNS, as the illustration had become redundant long back with the repeal of Regulation VII by the Madras Civil Courts Act, 1873.
- Section 2(8) of BNS provides that Documents includes ‘electronics and digital record’.

**B) Gender [Section 2(10) of BNS/Section 8 of IPC]:** Transgender recognised as gender, defined in section 2(10) expressly refers to transgender and defines the term which was not the case in section 8 of IPC.

#### **C) Judge**

- The old law’s definition of “Judge” is quite detailed.
- It states that the term “Judge” includes not only individuals officially designated as Judges but also those who have the authority to render definitive judgments in any legal proceeding, whether civil or criminal.
- This definition encompasses individuals who can make judgments that, if not appealed against, would be considered definitive.

- It also includes members of a body of persons authorized by law to render such judgments.

**D) Month and Year:**

- Section 49 of IPC required year or month to be reckoned as per British calendar while section 2(20) of BNS requires year or month to be reckoned as per the Gregorian calendar.

**E) Movable Property:** Scope of “Movable property” in section 2(21) not limited to property in corporeal form, unlike the definition in section 22.

- Section 2(21) of BNS omits the word “are intended to include corporeal” before the word “property” which was there in the definition of movable property in section 22 of IPC. Definition of movable property under BNS will include intangible assets like patents, copyrights, etc., also as well as actionable claims.

**F) Punishments [Section 4 of BNS/Section 53 of IPC]**

**i) Community service**

- Section 53 of IPC provided for 5 types of punishments viz.

(1) Death;

(2) Imprisonment for life;

(3) Imprisonment which is of two descriptions—rigorous and simple;

(4) Forfeiture of property and

(5) Fine. Section 4(f) of BNS has introduced a new 6th type of punishment – Community service.

- The BNS newly introduced Community Service as punishment for petty offences like non-appearance in response to a proclamation, attempt to commit suicide, to compel or restraint exercise of lawful power of public servant, petty theft on return of theft money, misconduct in public by a drunken person, defamation, etc.

- The term “community service” is not defined in BNS. However, it is defined by Explanation to section 23 of BNSS to mean the work which the Court may order a convict to perform as a form of punishment that benefits the community, for which he shall not be entitled to any remuneration.

### **Offences for which punishment of community service can be awarded**

- BNS prescribes Community Service as punishment for 6 petty offences as under.

<b>Sections</b>	<b>Offences</b>
Section 202	Public servant unlawfully engaging in trade
Section 209	Non-appearance in response to a proclamation under section 84 of Bharatiya Nagarik Suraksha Sanhita 2023.
Section 226	Attempt to commit suicide to compel or restraint exercise of lawful power.
Proviso below section 303(2)	In cases of theft where the value of the stolen property is less than five thousand rupees, and a person is convicted for the first time, shall upon return of the value of property or restoration of the stolen property, shall be punished with community service.
Section 355	Misconduct in public by a drunken person.
Section 356	Defamation

### **ii) Life imprisonment:**

- The punishment of imprisonment for life has been clearly defined as imprisonment for remainder of a person’s natural life.

### **G) An act of attempting suicide has been erased.**

Section 309 of the IPC deals with the provision regarding attempt to commit suicide. Suicide is no such crime under the code but attempt to commit suicide is punishable.

- This new act removes section of attempt to commit suicide from the statute, it does not entirely criminalised offence of attempt to die by suicide commit suicide.
- Section 226 of the BNS states that whoever attempts to commit suicide with the intent to compel or restrain any public servant from discharging his official duty shall be punished with simple imprisonment for a term which may extend to one year or with fine or with both or with community service.
- So, an attempt to commit suicide remains a punishable if it is made to stop a public servant from acting.

#### **H) House breaking:**

- Old law provided for 'House breaking by night'. Section 41 of BNS provides for 'house breaking after sunset and before sunrise'.

#### **I) Abetment Outside India for Offence in India (New) [Section 48 of BNS]**

##### **Abetment outside India**

- Section 48 of BNS provides that a person abets an offence within the meaning of this Sanhita who, without and beyond India, abets the commission of any act in India which would constitute an offence if committed in India.
- Abetment by a person outside India has been made an offence under section 48 to allow prosecution of person located in foreign country. Abetting Commission of Offence by Public or by more than Ten Persons [Section 57 of BNS/Section 117 of IPC]

#### **J) Rape [Section 63 of BNS/Section 375 of IPC]**

##### **i) Age of Consent**

Exception 2 to section 63 of BNS provides that sexual intercourse or sexual acts by a man with his own wife, the wife not being under 18 years of age, is not rape. Under section 375 of IPC the age limit was 15 years.

Clause (i) of section 64(2) of BNS provides for ‘commits rape, on a woman incapable of giving consent’. Section 376(2)(i) of IPC provided for ‘commits rape on woman when she is under 16 years of age’.

**iii) Rape, Punishment for, in Certain Cases [Section 65 of BNS/Section 376AB of IPC]**

- Section 65 of BNS combines both age categories (under 12 and under 16) into a single section, simplifying the legal framework.

**iv) Sexual Intercourse by Employing Deceitful Means, etc. [Section 69 of BNS]**

Sexual intercourse by employing deceitful means

Section 69 of BNS provides that whoever, by deceitful means or making by promise to marry a woman without any intention of fulfilling the same, and has sexual intercourse with her, such sexual intercourse not amounting to the offence of rape, shall be punishable

**iv) Rape, Gang [Section 70 of BNS/Sections 376D to 376DB of IPC]**

Death penalty for gang rape of woman under 18 years of age:

Rape, Gang [Section 70 of BNS/Sections 376D to 376DB of IPC] Death penalty for gang rape of woman under 18 years of age.

- Death sentence was provided under section 376DB of IPC for gang rape of woman under 12 years of age. No death penalty was provided for gang rape of woman aged below 16 but above 12 in section 376DA. Now, section 70(2) of BNS provides death penalty for gangrape of woman under 18 years of age.

**K) Woman, Assault or Use of Criminal Force with Intent to Disrobe [Section 76 of BNS/Section 354B of IPC]**

**i) Neutral Gender:**

- Word “whoever” is used in sections 76 and 77 of BNS. Earlier word ‘man’ was used in section 354B/354C of IPC.

**ii) Voyeurism [Section 77 of BNS/Section 354C of IPC]**

## **Neutral Gender**

- Word “whoever” is used in sections 75 and 76 of BNS. Earlier word ‘man’ was used in section 354B/354C of IPC.

### **i) Hiring child to commit an offence**

- Section 95 of BNS is a new provision.
- Hiring, employing, engaging or using a child for sexual exploitation or pornography is covered within the meaning of this section.

### **ii) Child, Procurement of [Section 96 of BNS/Section 366A of IPC]**

## **Neutral Gender**

- 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).
- The protection accorded by section 96 of BNS to children is wider than that accorded by section 366A of IPC since protection under section 96 is available to all children irrespective of gender while section 366A protected only minor girls.

## **Child**

- Word “child” is substituted for “any person” in section 372 of IPC.

### **iii) Child, Buying for Purposes of Prostitution, etc. [Section 99 of BNS/Section 373 of IPC]**

## **Child**

- Word ‘child’ is substituted for ‘person’ in section 99 of BNS.

## **Prescribed imprisonment**

- Imprisonment prescribed is ‘not less than 7 years but which may extend to 14 years. Earlier prescribed imprisonment was ‘ten years.

## **K) Decriminalisation of offence under section 377 of IPC: -**

Section 377 of the IPC categorised consensual sexual intercourse between same-sex people as an “unnatural offence” which is “against the order of nature”. It prescribed a punishment of 10 years imprisonment. The provision is a Victorian-era law, which survived into the 21st century. Interestingly, about 123 countries around the World have never penalised or decriminalised homosexuality. Currently, 57 Countries actively criminalized same sex relation.

The Hon’ble Apex Court partially struck down offence under section 377 of IPC in case of Navtej Singh Johar V/s Union of India (2018), decriminalising same-sex relations between consenting adults. LGBT individuals are now legally allowed to engage in consensual intercourse.

The BNS does not find any place for offence under section 377 of IPC.

#### **L) Mob Lynching [Section 103(1) of BNS/Section 302 of IPC]**

- Section 103(2) of BNS provides that when a group of five or more persons acting in concert commits murder on the ground of race, caste or community, sex, place of birth, language, personal belief or any other ground each member of such group shall be punished with death or with imprisonment for life, and shall also be liable to fine.

#### **M) Death, Causing by Negligence [Section 106 of BNS/Section 304A of IPC]: -**

##### **i) Increased punishment**

- Section 106(1) of BNS provides as to causing death of any person by doing any rash or negligent act not amounting to culpable homicide.
- The new law increases the punishment for causing death by negligence from a maximum of two years to a maximum of five years. This change reflects a stricter approach to cases of negligence resulting in death.

##### **ii) Offender escaping or failing to report [NEW]**

- Section 106(2) of BNS introduces an additional provision, which addresses situations where the offender escapes from the scene of the incident without reporting it to a police officer or Magistrate after the incident. In such cases, the punishment is very severe, with a maximum term of imprisonment of ten years with fine.

- Section 106(2) has been introduced to cover the hit and run accidents and to ensure reporting of accident immediately. This has been introduced with an aim to save the victim within the critical 'Golden Hour' a term introduced in the Motor Vehicles Act, 1988 in the year 2019.
- Punishment under section 106(2) is not attracted merely by virtue of driver escaping from the scene after the incident to escape the wrath of bystanders who might mob-lynch him. Offence is committed only if escape from scene is coupled with non-reporting by him to Police or Magistrate soon after the incident.

#### **N) New Definition of “Organised Crime” [Section 111(1)]**

The following are the ingredients of “Organised crime”:

- Continuing unlawful activity: Any continuing unlawful activity including: -

1. Kidnapping
2. Robbery
3. Vehicle theft
4. Extortion
5. Land grabbing
6. Contract killing
7. Economic offence
8. Cyber-crimes
9. Trafficking in persons, drugs, weapons or illicit goods or services
10. Human trafficking for prostitution or ransom

- Activity carried on by member/members of organised crime syndicate: -

Such activity is carried on by any person or a group of persons acting in concert, singly or jointly, either as a member of an organised crime syndicate or on behalf of such syndicate.

- Unlawful means: Such activity is carried on by use of violence, threat of violence, intimidation, coercion, or by any other unlawful means
- Aim is to obtain a benefit: Such activity is carried on to obtain direct or indirect, material benefit including a financial benefit.

New definition of “Organised crime syndicate” [Clause (I) of Explanation below Section 111(1)]

“Organised crime syndicate” means a group of three or more persons who, acting either singly or jointly, as a syndicate or gang indulge in any continuing unlawful activity.

Punishment provided for offence based on gravity and nature of offences. In the IPC, there is no place for organised crime.

#### **O) New Offence of Petty Organised Crime Section 112 of BNS is introduced.**

There is no such provision in IPC.

Section 112 of BNS, provides definition of “petty organized crime” Whoever, being a member of a group or gang, either singly or jointly, commits:

- Any act of theft
- Snatching
- Cheating
- Unauthorised selling of tickets
- Unauthorised betting or gambling
- Selling of public examination question papers
- Or any other similar criminal act is said to commit petty organised crime.

#### **Punishment for petty organized crime: -**

- Whoever commits any petty organised crime shall be punished with imprisonment for a term which shall not be less than one year but which may extend to seven years, and shall also be liable to fine.

#### **“Snatching”**

- The term “Snatching” will have the same meaning as given in definition in section 304(1) of BNS as section 3(2) of BNS provides that every expression which is explained in any part of BNS will be regarded as used in conformity with such explanation in every other part of BNS. However, if offender committing “snatching” (chain snatching, mobile snatching etc) is a member of a gang or group, the offence of snatching is punishable under this section.
- If he commits it as a lone wolf (operating by himself solo and not part of gang/group), it will be punishable u/s 304(2) of BNS.

### **Scope of the term “theft”**

The term “theft” is defined in section 303(1) of BNS. For the purposes of this sub-section “theft” includes

- Trick theft,
- Theft from vehicle, dwelling house or business premises,
- Cargo theft,
- Pick pocketing,
- Theft through card skimming,
- Shoplifting and
- Theft of Automated Teller Machine. The terms “trick theft”, “card skimming”, “shoplifting”, “pickpocketing etc are not defined in BNS. These terms will have to be understood as per their ordinary popular connotation.

As section 3(2) of BNS provides, every expression which is explained in any part of BNS will be regarded as used in conformity with such explanation in every other part of BNS, this definition of “theft” will apply to section 303 of BNS also.

If offender committing “theft” is a member of a gang or group, offence is punishable under this section. If he commits it as a lone wolf (operating by himself solo and not part of gang/group), it will be punishable u/s 303(2) of BNS. Punishment under section 303(2) is lesser than under section 112. Moreover, offence of theft under section 303(2) (committed by sole operator) is compoundable offence under section 359 of Bharatiya Nagarik Suraksha

Sanhita, 2023 (BNSS) while theft committed by a person who is a part of a gang is offence under section 112 and is not compoundable.

**P) New Offence of Terrorist Act is introduced in BNS, 2023:**

New definition – definition of ‘terrorist act is prescribed in section 113 of the BNS, 2023.

- Whoever does any act with the intent to threaten or likely to threaten the unity, integrity, sovereignty, security, or economic security of India or with the intent to strike terror or likely to strike terror in the people or any section of the people in India or in any foreign country, —
- by using bombs, dynamite or other explosive substance or inflammable substance or firearms or other lethal weapons or poisonous or noxious gases or other chemicals or by any other substance (whether biological, radioactive, nuclear or otherwise) of a hazardous nature or by any other means of whatever nature to cause or likely to cause, —
  1. death of, or injury to, any person or persons; or
  2. loss of, or damage to, or destruction of, property; or
  3. disruption of any supplies or services essential to the life of the community in India or in any foreign country; or
  4. damage to, the monetary stability of India by way of production or smuggling or circulation of counterfeit Indian paper currency, coin or of any other material; or
  5. damage or destruction of any property in India or in a foreign country used or intended to be used for the defence of India or in connection with any other purposes of the Government of India, any State Government or any of their agencies; or
- overawes by means of criminal force or the show of criminal force or attempts to do so or causes death of any public functionary or attempts to cause death of any public functionary; or detains, kidnaps or abducts any person and threatening to kill or injure such person or does any other act in order to compel the Government of India, any State Government or the Government of a foreign country or an international or inter-governmental organisation or any other person to do or abstain from doing any act.

## **Commit a terrorist Act**

### **Punishment:**

The punishment provided for offence of terrorist act under said Sanhita, based upon gravity of offence and manner in which offence is committed as well applicability of provisions. The maximum punishment provided for offence is of death.

### **Harbouring or concealing a terrorist:**

This sub-section shall not apply to any case in which the harbour or concealment is by the spouse of the offender.

Police officer of rank of SP and above to decide whether offence to be registered under UAPA or under this section.

For the removal of doubts, it is hereby declared that the officer not below the rank of Superintendent of Police shall decide whether to register the case under this section or under the Unlawful Activities (Prevention) Act, 1967.

## **CONCLUSION**

The 'Nyaya' signifies social justice. The present BNS transitions from the idea of punitive to Nyaya and restrains deterrence aspect, introducing provisions which focus on providing justice to all stakeholders. The aspect of Nyaya is visible through the transition from the retributive to reformative approach. Several punishments have been balanced, enhancing some of the sentences and posing of minimum statutory sentencing pattern. The introduction of the 'community service' as a form of punishment under Section 4 has been a step in the right direction. 5 The introduction of community service for minor offences marks a ground-breaking approach in India's legal system. The Indian criminal justice system is primarily based on the principle of retribution and considers crimes offences against the state, it acknowledges the need for a shift towards prioritizing the rights and concerns of the victims. The Offenders and the victims are the most important stakeholders of any crime, and the introduction of this form of reformative punishment is a form of 'Nyaya'.

## 7. A STUDY ON THE IMPACT OF BHARATIYA NYAYA SANHITA,2023 ON LAW ENFORCEMENT AND INVESTIGATION

MYTHREHI LOGANATHAN & SOUFATH NISHA S

### ABSTRACT

*The Bharatiya Nyaya Sanhita,2023 (BNS), replacing the Indian Penal Code (IPC) 1860, marks a significant shift in India's criminal justice framework. This article explores the new offenses, revised punishments, and a stronger emphasis on digital and forensic evidence aims to modernize criminal law while ensuring efficiency and justice. Focusing on law enforcement, the BNS grants police enhanced investigative powers, mandates stricter timelines for case resolution, and promotes the use of technology in evidence collection. The mandatory inclusion of forensic procedures in heinous crimes and the admissibility of electronic records enhance investigative accuracy and transparency. However, these reforms also raise concerns about implementation challenges, potential misuse of expanded powers, and the need for judicial safeguards. This article critically examines how BNS reshapes crime investigation, policing practices, and legal accountability. It also discusses potential hurdles in law enforcement adaptation and the balance between security and individual rights. By analyzing these legal transformations, the study provides insights into the broader implications of BNS on India's criminal justice system. One of the most significant changes under BNS is the enhanced role of technology in law enforcement and investigations. The new provisions mandate compulsory forensic investigations for serious offenses, the admissibility of electronic and digital evidence, and the videography of search and seizure operations. BNS enforces stricter timelines for investigations and trials, ensuring expedited justice delivery while preventing procedural delays. The paper explores issues such as privacy concerns in digital surveillance, the need for judicial oversight, and the adequacy of training for law enforcement officers to adapt to the new legal framework. It also discusses potential hurdles, including resource constraints, adaptation by the judiciary and police, and public perception of these changes. The study concludes by assessing the long-term implications of BNS in ensuring a fair, transparent, and effective criminal justice system in India.*

**Keywords:** *Forensic investigations, Electronic and digital evidence, Potential hurdles, Police power, Revised punishment.*

## 1. INTRODUCTION

India's criminal law framework, primarily based on colonial-era legislation, has long required reform to address contemporary challenges in crime and law enforcement. Recognizing this need, the government introduced three new laws in 2023: Among these, BNS, 2023 specifically deals with substantive criminal law, defining offenses and their punishments.

This article examines how these changes impact law enforcement agencies and investigation processes, highlighting improvements, challenges, and the way forward. Background and Rationale for Criminal Law Reform. India's criminal justice system was primarily based on the Indian Penal Code (IPC), 1860, a colonial-era law that remained largely despite drastic shifts in crime patterns, technological advancements, and socio-political realities. The need for modernization, efficiency, and victim-centric justice led to the introduction of three new laws:

1. Bharatiya Nyaya Sanhita (BNS), 2023 – Replacing IPC -1860, this law governs criminal offenses and punishments.
2. Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 – Replacing CrPC-1973, it regulates procedures of investigation, arrest, trial, and prosecution.
3. Bharatiya Sakshya Adhinyam (BSA), 2023 – Replacing the Indian Evidence Act-1872, it modernizes evidentiary provisions, including digital and electronic evidence

Among these, the BNS, 2023 is particularly crucial as it defines criminal conduct and its penalties, directly affecting police investigations and law enforcement strategies.

### 1.1 BHARATIYA NYAYA SANHITA(BNS),2023

The Bharatiya Nyaya Sanhita (BNS), 2023 is a landmark legislation that replaces the Indian Penal Code (IPC), 1860, with the aim of modernizing the criminal justice system and making India's justice system more efficient, transparent, and victim-centric. The term "Bharatiya Nyaya Sanhita" translates to "Indian Justice Code," reflecting its purpose of ensuring fair and efficient legal proceedings.

The BNS introduces new provisions, removes outdated laws, and strengthens law enforcement mechanisms and stricter penalties for crimes such as mob lynching, terrorism, and offenses against women and children, while also incorporating cybercrime regulations and digital evidence recognition. It mandates faster investigations and trials by setting clear timeframes to reduce delays in the justice system. Additionally, outdated provisions, including the sedition law, have been removed and replaced with modern security laws that better align with India's democratic principles.

### **1.3. OBJECTIVES OF BNS, 2023**

The Bharatiya Nyaya Sanhita (BNS), 2023 aims to modernize India's criminal justice system by replacing the Indian Penal Code (IPC), 1860. Its primary objectives include ensuring speedy justice, enhancing transparency, and making punishments more stringent for serious offenses like terrorism and organized crime. The law introduces provisions for community service as a penalty, promotes the use of technology in investigation, and strengthens victims' rights. It also aligns criminal laws with contemporary challenges, ensuring that justice is more accessible, efficient, and victim-centric.

The following are the key objectives of BNS,2023

1. Modernization of Criminal Law – Updating legal provisions to address modern crimes like cybercrime, terrorism, and organized crime.
2. Victim-Centric Justice – Strengthening victim rights, especially in cases of sexual offenses, mob lynching, and organized violence.
3. Efficiency in Legal Processes – Reducing delays in investigation and trials through time-bound procedures and digital integration.
4. Elimination of Colonial Legacy – Removing archaic terms and laws that were rooted in colonial-era governance.

#### **1.4 HISTORICAL BACKGROUND OF BHARATIYA NYAYA SANHITA(BNS), 2023**

The Indian Penal Code (IPC), 1860, was drafted by Lord Thomas Babington Macaulay and enacted under British rule. It served as the primary criminal law in India for over 160 years. While the IPC was a comprehensive legal framework, it was designed primarily to maintain colonial control rather than ensure justice in an independent and democratic India.

In 2019, the Ministry of Home Affairs (MHA) set up a committee to review criminal laws and propose reforms. The government sought inputs from judges, legal scholars, law enforcement agencies, and the public to draft a law that aligned with India's present socio-political realities. In August 2023, the Bharatiya Nyaya Sanhita (BNS), 2023, was introduced in Parliament as part of a larger legal reform package, along with:

1. Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 (Replaces the Criminal Procedure Code)
2. Bharatiya Sakshya Adhinyam (BSA), 2023 (Replaces the Indian Evidence Act)

The bill was passed in December 2023 and came into effect in 2024.

#### **1.5 NEED FOR BHARATIYA NYAYA SANHITA (BNS), 2023**

The Bharatiya Nyaya Sanhita (BNS), 2023 was introduced to replace the colonial-era Indian Penal Code (IPC), 1860, which had become outdated and insufficient in addressing modern crimes. The need for BNS arose due to the evolving nature of offenses such as cybercrime, terrorism, organized crime, and financial fraud, which were not adequately covered under the IPC. The new law aims to make the justice system more efficient, transparent, and victim-centric, with provisions for faster trials, community service as a punishment, and increased use of technology in investigations. By incorporating stricter penalties for heinous crimes and simplifying legal procedures, BNS ensures that India's criminal justice system is better suited to contemporary challenges.

After independence in 1947, India retained the IPC but made incremental amendments over the decades. However, legal experts and policymakers identified several issues:

1. Colonial Legacy – Many provisions were outdated and did not reflect modern Indian society.

2. New-Age Crimes – Cybercrime, terrorism, and organized crime were not adequately addressed.
3. Delayed Justice – Investigations and trials often took years due to procedural loopholes.
4. Lack of Victim-Centric Approach – The IPC focused more on punishing offenders rather than protecting victims' rights.
5. Stricter penalties - The BNS imposed stricter penalties for terrorism, mob lynching, crimes against women and children, and organized crime, ensuring better deterrence and public safety.
6. Digital evidence -The BNS officially recognizes digital evidence and electronic records, making it easier to prosecute cybercriminals and fraudsters.

The IPC was largely offender-focused, but the BNS places greater emphasis on protecting victims' rights by ensuring better legal protection and faster resolution of cases, especially for women and children. The BNS removes obsolete provisions such as sedition (Section 124A of IPC) and replaces them with laws that focus on national security and sovereignty without restricting free speech<sup>1</sup>. The BNS gives clearer guidelines and enhanced powers to law enforcement agencies, helping them handle investigations and prosecutions more effectively.

## **2. KEY CHANGES IN BHARATIYA NYAYA SANHITA,2023**

The Bharatiya Nyaya Sanhita (BNS), which replaced the Indian Penal Code (IPC), introduces key changes including the removal of archaic offenses like sedition and adultery, stricter penalties for certain crimes, and the inclusion of new categories like cybercrimes and organized crime. The following are the key changes in the Bharatiya Nyaya Sanhita,2023(BNS).

### **2.1. NEW OFFENCES AND STRICTER PUNISHMENTS**

BNS, 2023 introduces new offenses that were not explicitly covered under the IPC, making it easier for law enforcement agencies to take action. Some key additions include:

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<sup>1</sup> The Bharatiya Nyaya Sanhita, 2023;[Section 124(A)]

1. Terrorism (Section 113) – Unlike IPC, BNS explicitly defines terrorism and prescribes life imprisonment or death penalty for severe cases.<sup>2</sup>
2. Mob Lynching (Section 103) – A new provision criminalizes lynching based on race, caste, or religion, punishable with death or life imprisonment in extreme cases.<sup>3</sup>
3. Organized Crime (Section 109) – Unlike IPC, BNS introduces specific punishment for organized crime syndicates, with life imprisonment or death penalty in serious cases.<sup>4</sup>
4. Hit-and-Run Cases (Section 104) – BNS makes fleeing after causing a fatal road accident a criminal offense, punishable by up to 10 years in prison.<sup>5</sup>
5. Sexual Crimes – Marital rape (under specific conditions) is now recognized in certain cases, strengthening protections for women.

## **2.2. ADVANCEMENTS IN INVESTIGATION PROCEDURES**

BNS, 2023 introduces scientific and technological advancements to improve police efficiency:

1. Mandatory Forensic Examination – Required for all cases with punishment exceeding 7 years.
2. Expanded Use of Electronic and Digital Evidence – Allows CCTV footage, call records, and cyber forensics as primary evidence.
3. Time-Bound Investigations – Investigations must be completed within 90 days, reducing case backlog.

These changes make investigations more technology-driven and evidence-based, improving conviction rates.

## **2.3. DECRIMINALIZATION AND RATIONALIZATION OF OFFENCES**

It introduced several decriminalization and rationalization measures to reduce unnecessary litigation and ease the burden on the criminal justice system. Below

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<sup>2</sup> Section 113

<sup>3</sup> Section 103

<sup>4</sup> Section 109

<sup>5</sup> Section 104

1. Adultery and Attempt to Suicide – These offenses have been decriminalized, shifting focus towards rehabilitation rather than punishment.
2. Sedition (Section 150) – The controversial sedition law has been replaced with a new provision penalizing acts that "endanger sovereignty, unity, and integrity of India."<sup>6</sup>

These changes reduce police burden and allow law enforcement agencies to focus on serious crimes. These new provisions fill legal gaps and improve enforcement clarity.

### **3. IMPACT OF BNS,2023 ON LAW ENFORCEMENT AND INVESTIGATION**

It introduced significant reforms in criminal law. These changes directly impact law enforcement agencies and India's investment environment, particularly in areas like ease of doing business, investor confidence, and legal compliance.

#### **3.1. IMPROVED CLARITY AND EASE OF INVESTIGATION**

One of the biggest challenges under the IPC was the ambiguity of legal provisions, leading to inconsistent interpretations. The BNS provides clearer definitions of crimes, making it easier for police officers to identify offenses and proceed with investigations.

For instance, the explicit inclusion of organized crime, terrorism, and lynching eliminates loopholes that criminals exploited under IPC. Police officers now have a well-defined legal framework to act swiftly against emerging threats.

#### **3.2. ENHANCED USE OF TECHNOLOGY IN INVESTIGATIONS**

- The mandatory requirement of forensic evidence in serious crimes transforms investigative practices by reducing reliance on witness statements, which are often manipulated or influenced. Use of DNA profiling, fingerprint analysis, and CCTV evidence becomes a legal necessity, increasing conviction rates.
- Encouragement of AI-based facial recognition and cyber forensic tools assists in tackling white-collar crimes, cyber fraud, and online terrorism.
- This shift makes investigations more scientific, transparent, and foolproof, preventing wrongful convictions.

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<sup>6</sup>Section 150

### **3.3. TIME-BOUND CASE RESOLUTION**

- By setting strict timelines for investigation completion (90 days), BNS reduces delays in the justice system. Earlier, lack of deadlines led to prolonged trials, enabling criminals to exploit legal loopholes.

However, this also puts added pressure on police departments, requiring more manpower, forensic labs, and technological support.

### **3.4. STRENGTHENING ACCOUNTABILITY OF LAW ENFORCEMENT AGENCIES**

1. Mandatory recording of search and seizure procedures prevents police misconduct.
2. Greater reliance on electronic evidence ensures transparency and minimizes corruption.
3. Removal of outdated laws (like sedition in its old form) reduces police misuse of power.

These measures promote ethical policing and enhance public trust in law enforcement agencies. This study highlights how BNS, 2023 empowers law enforcement agencies while ensuring justice and fairness in investigations, marking a significant step toward a modern criminal justice system. Ed pressure on police departments, requiring more manpower, forensic labs, and technological support.

## **4. CHALLENGES IN IMPLEMENTATION**

The implementation of the Bharatiya Nyaya Sanhita (BNS), 2023 poses several challenges due to the extensive changes it brings to India's criminal justice system. Lack of awareness and training among police officers, lawyers, and judges can lead to inconsistencies in enforcement. Additionally, concerns over increased police powers and potential misuse of provisions highlight the need for strong oversight mechanisms. The integration of technology-driven investigation methods, while progressive, may face hurdles due to inadequate infrastructure and digital literacy. Moreover, ensuring uniform implementation across states, given India's diverse legal and administrative landscape, remains a significant challenge. Addressing these issues requires comprehensive training, technological upgrades, and clear guidelines to ensure the smooth enforcement of the new law.

While BNS, 2023 introduces transformative changes, implementation challenges remain:

1. Training of Law Enforcement Officers – Police officers need extensive training on new laws, forensic methods, and digital evidence handling.
2. Infrastructure Constraints – Limited forensic labs and outdated technology in police stations hinder proper investigations
3. Burden of Additional Responsibilities – Increased procedural requirements may lead to delays in case disposal, especially in under-resourced areas.
4. Public Awareness – Citizens must be educated about new laws and their rights,
5. preventing misuse by either police or legal practitioners.

Addressing these challenges requires investment in police modernization, hiring forensic experts, and increasing judicial efficiency. This study highlights how BNS, 2023 empowers law enforcement agencies while ensuring justice and fairness in investigations, marking a significant step toward a modern criminal justice system.

## **5. IMPACT OF BHARATIYA NYAYA SANHITA (BNS), 2023 ON LAW ENFORCEMENT AND INVESTIGATION**

The Bharatiya Nyaya Sanhita (BNS), 2023 introduces several reforms that enhance law enforcement and investigation. However, it also presents certain challenges. Below is a breakdown of its positive and negative impacts:

### **5.1 POSITIVE IMPACTS**

#### **A. Improved Investigation Process**

- Mandatory Forensic Investigation – Crimes punishable by 7+ years of imprisonment now require forensic examination, leading to scientific and evidence-based policing.
- Use of Digital & Electronic Evidence – Law enforcement can now rely more on CCTV footage, digital records, and electronic evidence, improving conviction rates.

#### **B. Increased Law Enforcement Efficiency**

- Speedier Trials – Reduced number of sections (358 instead of IPC 511) simplifies legal procedures, leading to faster case resolution.

- Strict Punishments for Organized Crime & Mob Lynching – New provisions criminalizing mob lynching and organized crime provide more legal clarity and deterrence

### **C. Enhanced Victim Protection & Rights**

- Victim-Centric Approach – Improved compensation schemes and protection mechanisms strengthen victim rights and rehabilitation.

## **5.2 NEGATIVE IMPACTS**

### **A. Implementation Challenges**

- Law Enforcement Training Issues – Police and judicial officers need extensive training to adapt to the new provisions and procedures.
- Forensic Infrastructure Gaps – The mandatory forensic investigation rule may delay cases due to a lack of forensic labs and trained personnel.

### **B. Potential Misuse of Provisions**

- Expanded Definition of Terrorism – The broad definition may lead to misuse against activists or political dissenters, similar to past misuse of sedition laws.
- Stricter Bail Provisions – While reducing crime, strict bail rules may cause hardships for underprivileged individuals awaiting trial.

### **C. Transitional Legal Issues**

- Legal Uncertainty in Pending Cases – The transition from IPC to BNS creates confusion in ongoing cases regarding which law applies.

The BNS, 2023 is a significant step toward modernizing criminal law with a focus on scientific investigation and faster justice. However, practical implementation challenges need to be addressed, especially in law enforcement training, forensic readiness, and ensuring no misuse of new provisions.

## 6. CHALLENGES IN LAW ENFORCEMENT ADAPTATION

The BNS brings progressive reforms, its success depends on how law enforcement adapts major concerns include:

1. Training Gaps – Policemen and legal professionals need extensive training to understand new provisions.
2. Backlog of Cases – Transitioning from IPC to BNS may lead to confusion in pending cases.
3. Forensic Bottlenecks –With only a few well-equipped forensic labs, investigations might slow down instead of speeding up.

### **A Step Forward, But Not Without Hurdles.**

The BNS, 2023, undoubtedly brings a fresh perspective to India’s criminal justice system, focusing on forensic-based investigations, technology-driven law enforcement, and stricter penalties for serious crimes. However, successful implementation will require infrastructure development, police training, and safeguards against misuse.

## 7. COMPARISON OF IPC AND BNS, 2023

The Bharatiya Nyaya Sanhita (BNS), 2023, replaces the colonial-era Indian Penal Code (IPC), 1860, aiming to modernize India’s criminal justice system. While both laws define crimes and prescribe punishments, BNS introduces stricter penalties for serious offenses, such as terrorism and mob lynching, which were not explicitly addressed in the IPC. The new law emphasizes speedy justice by setting time limits for investigations and trials, reducing procedural delays. It also incorporates community service as a punishment for minor offenses, promoting reformative justice. Unlike the IPC, the BNS enhances technological integration in investigations, making provisions for electronic evidence and forensic analysis. However, concerns exist over its increased police powers, which some fear may lead to misuse. Overall, while the IPC was a colonial-era framework, BNS modernizes and streamlines criminal law to suit contemporary challenges and improve efficiency in law enforcement. comparative analysis of the Indian Penal Code (IPC) and Bharatiya Nyaya Sanhita (BNS), 2023 in terms of key legal changes, investigation procedures, and law enforcement impact.

## **7.1. IMPACT ON LAW ENFORCEMENT & INVESTIGATION**

1. Efficiency in Investigations – Mandatory forensic procedures improve the accuracy of Investigations.
2. Use of Technology – Digital evidence admissibility helps modernize policing.
3. Stricter Punishments – Acts as a deterrent for crimes like terrorism, mob lynching, and hit-and-run cases.
4. Faster Justice Delivery – Reduced number of sections and improved trial mechanisms ensure speedier case resolutions.

## **8. KEY CHANGES FROM IPC to BNS**

One of the primary issues is the transition from the Indian Penal Code (IPC), 1860, requiring law enforcement agencies, judiciary, and legal professionals to adapt to new definitions, procedures, and terminologies.

Removal of Sedition Law (Section 124A of IPC) and replacement with a provision on "acts endangering India's sovereignty."

1. Introduction of Mob Lynching as a Crime, with strict penalties.
2. Increased Focus on Cybercrime, digital fraud, and electronic evidence.
3. Stronger Anti-Terrorism and Organized Crime Laws, ensuring better national security
4. Time-Bound Investigations and Trials, reducing delays in justice delivery.

## **9. CASE STUDY: IMPACT OF BHARATIYA NYAYA SANHITA(BNS),2023 ON LAW ENFORCEMENT AND INVESTIGATION**

### **BACKGROUND**

The Bharatiya Nyaya Sanhita (BNS), 2023, replaces the Indian Penal Code (IPC), 1860, with the objective of modernizing India's criminal justice system. This law introduces new provisions, modifies existing ones, and focuses on efficiency, technological integration, and victim-centric justice. The impact of BNS on law enforcement and investigation can be analyzed through specific cases.

## 9.1 ILLUSTRATION 1: FASTER INVESTIGATION THROUGH TECHNOLOGY INTEGRATION

### FACTS OF THE CASE

A cybercrime involving financial fraud through phishing attacks was reported in Mumbai. The accused had used digital wallets to launder money across multiple accounts.

### Legal Provisions Applied

1. Section 173(3), BNS – Mandates time-bound investigations, requiring police to complete the probe within 90 days.<sup>7</sup>
2. Section 105, BNS – Expands digital evidence admissibility, making it easier to use electronic records in investigations.<sup>8</sup>

### IMPACT ON INVESTIGATION & LAW ENFORCEMENT

1. Faster Case Resolution: Police, using digital forensic tools, identified and arrested the accused within 45 days, preventing further financial loss.
2. Improved Evidence Collection: Digital transactions were directly admissible under BNS provisions, eliminating procedural delays.
3. Enhanced Cooperation with Banks: Law enforcement agencies could legally access bank transaction data more efficiently.

**KEY TAKEAWAY:** BNS's digital evidence provisions accelerated the investigative process and strengthened prosecution.

## 9.2 ILLUSTRATION 2: TERRORISM AND ORGANISED CRIME

### FACTS OF THE CASE

A terror suspect was arrested in Delhi for plotting attacks, with explosives and radicalized digital content found in his possession.

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<sup>7</sup> The Bharatiya Nyaya Sanhita, 2024;[Section 173(3)]

<sup>8</sup> The Bharatiya Nyaya Sanhita, 2024;(Section 105)

### **Legal Provisions Applied**

1. Section 113, BNS – Covers organized crime and terrorism, with stringent penalties.<sup>9</sup>
2. Section 211, BNS – Allows preventive detention in cases involving national security threats.<sup>10</sup>

### **IMPACT ON INVESTIGATION & LAW ENFORCEMENT**

**Stronger Legal Framework:** The accused was booked under stringent anti-terrorism laws within BNS, ensuring a solid case. **Prevention-Oriented Policing:** Authorities used preventive detention powers to interrogate and foil larger plans. **Expedited Court Proceedings:** The legal provisions allowed for quicker charge-sheet filing and trial commencement.

**Key Takeaway:** BNS empowered law enforcement with stronger legal backing to tackle terrorism.

### **39.3 ILLUSTRATION 3: MOB LYNCHING AND PUBLIC ORDER**

#### **FACTS OF THE CASE**

A mob lynching incident occurred in Uttar Pradesh due to religious misinformation spread via social media. The police arrested multiple suspects based on video evidence.

#### **Legal Provisions Applied**

1. Section 103, BNS – Introduces specific provisions for mob lynching.<sup>11</sup>
2. Section 150, BNS – Criminalizes spreading false information leading to violence.<sup>12</sup>

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<sup>9</sup> The Bharatiya Nyaya Sanhita, 2023;(Section 113)

<sup>10</sup>(Section 211)

<sup>11</sup> (Section 103)

<sup>12</sup> (Section 150)

## IMPACT ON INVESTIGATION & LAW ENFORCEMENT

1. Stronger Prosecution: The law explicitly criminalized lynching, making the legal process clearer.
2. Technology-Based Identification: CCTV and social media evidence were admissible without procedural loopholes.
3. Public Awareness: The case led to stricter enforcement and deterrence of communal violence.

**KEY TAKEAWAY:** BNS helped law enforcement take swift and decisive action against mob violence.

## 10. CONCLUSION AND SUGGESTION

### CONCLUSION

The Bharatiya Nyaya Sanhita (BNS), 2023 is a landmark reform that modernizes India's criminal justice system, making it more efficient, transparent, and victim-centric and also strengthens police investigations through forensic and digital evidence. It reduces delays by setting time limits for case resolution. It ensures accountability and protects citizen rights.

However, its success depends on effective implementation, training, and infrastructure development.

### SUGGESTION

1. Capacity Building for Police – Regular training on forensic science, cybercrime investigation, and legal procedures is necessary.
2. Forensic Lab Expansion – More forensic labs must be established to handle mandatory forensic investigations efficiently.
3. Legal Awareness Campaigns – Educating citizens about new legal provisions will help prevent misuse and enhance cooperation with law enforcement.
4. Use of AI and Big Data in Crime Prevention – Investing in predictive policing tools can help prevent crimes before they occur.

By adopting these measures, India can fully harness the benefits of BNS, 2023, ensuring a stronger, more accountable, and technologically advanced law enforcement system.

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7. Lexology Analysis: An in-depth analysis of the changes introduced by the BNS, 2023, focusing on its impact on the legal framework.
8. AZB & Partners Overview: A comprehensive overview of the BNS, 2023, discussing its enactment and the key changes it brings to the penal code.

## 8. GENDER EQUITY PREFERS GENDER EQUALITY

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### ABSTRACT

*This paper took an examination of the paradigmatic shift's requisite for the efficacious implementation of gender neutrality within the Bharatiya Nyaya Suraksha. Despite the ostensibly egalitarian provisions enshrined in the Constitution of India, the systemic and structural impediments perpetuate a pervasive gender bias, militating against the attainment of substantive gender justice.*

*Through a dialectical analysis of the intersectionalities between gender, power, and the juridical apparatus, this research elucidates the ways in which the Bharatiya Nyaya Suraksha perpetuates and reinforces gender-based discrimination, marginalization, and exclusion. Furthermore, this study proffers a critical evaluation of the existing legislative and policy frameworks, highlighting their limitations and shortcomings in promoting gender neutrality. Ultimately, this research advocates for a transformative and inclusive approach to gender justice, one that seeks to dismantle the entrenched patriarchal norms and power structures, and promote a more equitable and just society.*

*Section 96 of BNS provides the word "child" which replaced the word minor girl to seek gender neutrality for all peoples. This act took article 14 of the Indian constitution seriously that equality before law.*

**Keywords:** 1) gender neutrality. 2) gender justice. 3) patriarchal norms. 4) transgender 5) modern law. 6) law suitable to society.

## 1. INTRODUCTION

"I MEASURE THE PROGRESS OF A COMMUNITY BY THE DEGREE OF PROGRESS WHICH WOMEN HAS ACHIEVED" starting this paper by the words of the father of Indian constitution and also the father of Equality, Dr.BR Ambedkar, he states that our country's progress will be identified by the women's advancement in our country. To attain this the Indian criminal justice system were replaced Indian penal code ,1860 by Bharatiya Nyaya Sanhita, 2023 added provisions relating to gender neutrality.

This research adopts a dual approach exploring two seemingly opposing viewpoints that, upon closer examination, reveal a deeper connection and shared understanding, much like two faces of a same coin. The first phase is positive that is women's equity and the next is negative aspect which means men's inequality.

In India women face types of violation in ancient times and it all getting decreased by laws. Bharatiya Nyaya Sanhita ,2023 gives more attention to protect women against exploitation which IPC lost to do. Bharatiya Nyaya Sanhita have given more protection to women and children to reduce gender bias. Through a nuanced analysis of existing legislative framework, judicial pronouncement, and institutional mechanism, this paper study aims to identify endemic gaps and challenges that have been hindered the realisation of gender equality within the justice system.

"Gender equity prefers gender equality", gender equity is not only for women, it also for other genders. In this modern time offences against women and child are punishable, but there is no provision for cruelty against men or LGBTQ. More provisions often neglect gender diversity and assume women are victims an men are perpetrators. In this regard, formulating an implementing gender neutral laws are essential to make gender equity to gender equality. In this 2 perspectives Bharatiya Nyaya Sanhita were undergone exclusive provisions.

Goodreads, quotes by BR Ambedkar

Bharatiya Nyaya Sanhita,2023.

The Indian Penal Code ,1860.

Radha Rajan, safeguarding women, the role of Bharatiya Nyaya Sanhita ,2023 in preventing sexual offences ,2024.

## **2.HISTORICAL BACKGROUND; ANALYSIS**

Indian penal code,1860 were outdated as it will not suit to this modern era. Women and children want a more protection against violation of their rights . Even though other genders also need a protection, to overcome those critics Bharatiya Nyaya Sanhita were introduced many provisions for protect women and children.

### **2.1. Landmark judgment shaping Indian Criminal Justice System.**

The cumulative impact of these judicial precedents has substantively strengthened, affording greater protection of gender equity in Bharatiya Nyaya Sanhita,2023.

Vishakha v. State of Rajasthan (1997) The Supreme Court of India, in the landmark case Vishakha v. State of Rajasthan, established critical guidelines for addressing sexual harassment at the workplace. This case arose from a brutal incident where a social worker was gang-raped, leading to widespread recognition of the need for legal safeguards against sexual harassment. The court, in the absence of specific legislation, laid down the Vishakha Guidelines, which mandated employers to take preventive measures, provide a complaint mechanism, and ensure that sexual harassment cases were handled with seriousness. This judgment was pivotal as it recognized sexual harassment as a violation of fundamental rights and led to the eventual enactment of the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013, demonstrating the judiciary's role in shaping legal frameworks to protect women's rights.

Nirbhaya Case (2012) The Nirbhaya Case of 2012, involving the brutal gang rape and murder of a young woman in Delhi, shocked the nation and led to significant legal reforms. The incident prompted widespread protests and a demand for stronger laws to protect women from sexual violence. In response, the Criminal Law Amendment Act, 2013, was enacted, introducing stricter punishments for sexual offences, including the death penalty for repeat offenders,

Indian kanoon, Vishaka vs state of Rajasthan ,1997. The Indian constitution ,1950.

new offences such as voyeurism, stalking, and acid attacks. The case not only highlighted the need for swift and stringent legal action against sexual violence but also demonstrated the power of public opinion in driving legislative change, making it a cornerstone in the evolution of laws related to crimes against women in India.

### **UNPACKING MORE GENDER NEUTRALITY WHICH IPC PACKED**

IPC have packed more aspects that unpacked by BNS to protect both gender of children from exploitation, and here is also a comparison between IPC and BNS. The first aspect of this paper is positive aspect that is women's privilege. Bharatiya Nyaya Sanhita have brought more sections to safeguard women and children safety such as;

SECTION 96 of BNS: Both boys and girls could get procured for sexual exploitation. The word minor girl in section 366 A of IPC were replaced by the word "child" to cover both gender under 18 years of age. This made the protection for all gender of children.

SECTION 70 of BNS: Rape of 18 years girl, offender will be punishment may increase to death sentence to protect girls under 18 years.

SECTION 76 of BNS: women assault or use of criminal force with intend to disrobe, in this section it mentions 'whoever' i.e. regardless of gender any person causes can be liable, this provision makes gender neutrality.

SECTION 77 of BNS also mention whoever done voyeurism may liable, makes gender neutral.

Provisions of Bharatiya Nyaya Sanhita, 2023.

Gender neutrality provisions in the new criminal laws; [nyayasanhita.com](http://nyayasanhita.com)

Also, it makes gender neutrality to the women to empower them against discriminations. various provisions were gone through the protection of women.

To make gender neutrality among peoples to protect Article 14 of the Indian constitution,1950, SECTION 2 defines gender, "he" and its derivatives are used of any person, whether male, female or transgender.

Explanation: “transgender” shall have the meaning assigned to it in clause (k) of section 2 of the Transgender Persons (Protection of Rights) Act, 2019. The word child included both girl and boy of under 18 years of age to make gender neutrality. statistics from the 2007 report on child abuse in India by the Ministry of Women and Child Welfare. By this report we able to know the importance of BNS made a provision for gender neutrality among children.

One is every two children interviewed (53.22%) reported being victims of one or more forms of sexual abuse that included severe and other forms. More than half (52.94%) of those who reported abuse were boys while 47.06% were girls.

20.90% of children reported being subject to severe forms of sexual abuse that included sexual assault, making the child fondle private parts, making the child exhibit private body parts and being photographed in the nude. Of these, a majority (57.3%) were boys.

Transgender persons protection of rights act ,2019.

Ministry of women and children welfare,1985.

Radha Rajan; safeguarding women; the role of Bharatiya Nyaya Sanhita,2023 in preventing sexual offences; Research Gate. Article 14 of the constitution of India ,1950.

Section 69 of Bhartiya Nyaya Sanhita 2023; safeguarding women against deceptive promises.

## **STATISTICS**

Statistics from the 2007 report on child abuse in India by the Ministry of Women and Child Welfare. By this report we able to know the importance of BNS made a provision for gender neutrality among children.

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984 sexual abuse that included sexual assault, making the child fondle private parts, making the child exhibit private body parts and being photographed in the nude. Of these, a majority (57.3%) were boys.

Half (50.7%) the child were subjected to other forms of sexual abuse that included forcible kissing, sexual advances made during travel and marriages and exposure to pornographic materials. Once again, half the victim (53.07%) were boys.

Of all the children reporting sexual assault (penetration of the anus, vagina or oral sex), 54.4% were boys.

9 states were reported highest percentage of sexual abuse among boys as compared to girls.

Statistics of ministry affairs in 2009.

A cross-sectional study of abuse of men. National library of medicine.

Male victims of sexual assault, John C. Thomass, Kopel, behavioural sciences.

### **WHERE IS ARTICLE -14?**

A common query in modern times is "what is the justification for providing women with more and more rights and more safeguards?"

"In the past, women experienced severe social and economic disparities, prompting the development of laws aimed at promoting gender equality and safeguarding women's rights. These measures seek to redress historical inequalities and ensure women have equal opportunities and protections under the law."

But now, in this modern era there is a need of equality rather than equity because women are not discriminated like in ancient times. Both men and women are being equal in this modern period. Here, both the men and women are committing crime, and all genders are being victims for some offences, but the law only protects the women in some criminal activities. For example, rape, in this era both all the genders are affected from rape but only women are considered as victims. Now where is equality in this modern era? Article 15(3) make

provision for protect women and children but if another gender right gets violated there is no provision for make them victims for some specific offences in BNS.

Article 14 of the Indian constitution ,1950.

Adult male victims of rape; journal of forensic medicine and law;2020

New criminal law legalizes male rape in Indians'. Rana and co, new delhi.2024

DR Amit Patil; Adult male victims of rape; need of legal recognition in India ,2021.

Sexual violence against men in India; Janvi Mehta; legalservices.com

Reported victims of rape in India 2022, Statista research department.

### **THE NON-RECOGNITION OF LGBTQ IN BNS**

The Bharatiya Nyaya Sanhita (BNS) has inadvertently neglected the concerns of transgender and LGBTQ+ individuals by omitting specific provisions for their protection. Furthermore, the Act consolidates issues related to women and children into a single chapter, potentially oversimplifying the unique challenges faced by each group. These are like discrimination by gender. A critical examination of the definition of rape, as outlined in Section 375 of the Indian Penal Code (IPC), now reconfigured as Section 63 of the Bharatiya Nyaya Sanhita (BNS), reveals a persisting gender bias. The section's seven stipulated conditions predominantly construe men as the perpetrators of rape, thereby perpetuating a narrow and gendered understanding of sexual violence. This gendered framework overlooks the complexities of sexual assault, neglecting the experiences of male survivors, transgender individuals, and those who identify as non-binary. Furthermore, it reinforces harmful gender stereotypes, where men are solely cast as aggressors and women as victim.

Over the last few decades, there has been concerted documentation of violence faced by transgender and queer persons, including physical and emotional abuse, forms of sexual violence and assault by family, community and public servants.

For instance, the 1991 report of the AIDS Bhedbhav Virodhi Andolan (ABVA) highlighted sexual violence, assault and extortion faced by the transgender and queer community. A 2003

report by People’s Union for Civil Liberties (PUCL) – Karnataka documented harassment by the police in public places, harassment at home, abuse and harassment in police stations as well as rapes in jails. Several representations were made before the government-appointed Justice Verma Committee on amendments to criminal law in 2013, such as by Lawyers Collective and Alternative Law Forum, recommending that the victim in sexual offences must be made gender neutral, to bring within its fold sexual violence against transgender and queer persons.

Numerous affidavits by affected members of the trans\* and queer community, and their parents were filed before the higher judiciary, when the constitutionality of Section 377 of the IPC (which criminalized homosexuality) was being heard by the Delhi High Court in Naz Foundation case (2009) and the Supreme Court in Navtej Singh Johar case (2018). Familial violence in the lives of queer and trans\* persons was documented in 2023 in the context of the Marriage Equality case in the Supreme Court. This report was based on a closed-door hearing organized by PUCL and National Network of LBI Women and Trans Persons. It details instances of physical and sexual violence, mental and emotional abuse, and importantly, the collusion of police, courts and care institutions with the family, as well as natal family violence against transgender and queer persons.

Yet what the BNS offers by way of a response to the varied forms of violence faced by trans\* and queer people is a stoic and defeating silence. A Control on the BNS document reveals the mention of transgender only in the definition – section 2(10) which refers to section 2(k) of the Transgender Persons (Protection of Rights) Act, 2019 for a definition of ‘transgender.’ Surely more was expected than a mere inclusion in the definition section? Since section 377 IPC was struck down as unconstitutional in relation to sexual intercourse between consenting adults in Navtej Singh Johar case of 2018, there is no equivalent of this section that is added to the BNS. However, that provision accorded a semblance of protection to sexual violence against persons other than cisgendered women. If one thought that the government probably did not do so due to the existence of a special legislation for transgender persons – Transgender Persons (Protection of Rights) Act, 2019, it needs to be noted that physical, sexual, verbal, emotional and economic abuse against transgender persons is punishable with six months to two years’ imprisonment – far lesser than most provisions of sexual and gender-based violence against women in the BNS (discussed below).

However, none of the provisions dealing with sexual offences or assault on a woman have been made gender inclusive regarding the victim. From this, one can conclude that in the BNS, there is no provision that addresses the various forms of violence against transgender and queer people that have been documented, including physical, sexual and emotional violence, and that the perpetrators – members of the natal family, community and state agencies – continue to enjoy complete impunity for the same.

Report of AIDS bhedbhav Virodhi andolan, 1991

Peoples' union for civil liberties, 2003

Justice Verma committee, 2013

Constitutionality of section 377 of Indian penal code, 1860

Naz foundation case, 2009

Section 2 oh transgenders protection of rights act, 2019

Navtej Singh Johar case, 2019 decriminalization of homosexuality, 2018

## **CONCLUSION**

To conclude with my suggestion, The Bharatiya Nyaya Sanhita (BNS) has been a significant step towards reforming India's criminal justice system. However, a critical examination of the BNS reveals that certain provisions prioritize the protection of women as well as other genders, potentially undermining the principle of equality enshrined in Article 14 of the Indian Constitution.

Article 14 guarantees that the state shall not deny to any person equality before the law or the equal protection of the laws. This provision is foundational to India's commitment to gender equality and non-discrimination. However, certain provisions in the BNS, such as those related to domestic violence and sexual harassment, employ language that disproportionately protects women, potentially perpetuating a gender bias.

To address this concern, it is imperative that the BNS be amended to ensure that all genders are treated equally and without discrimination. This can be achieved by adopting gender-

neutral language throughout the code. For instance, instead of using terms like "wife" or "husband," the BNS could employ more inclusive language like "spouse" or "partner."

Moreover, the BNS should introduce a common word or phrase to represent all genders in a respectful and dignified manner. This would not only promote linguistic inclusivity but also contribute to a cultural shift towards greater acceptance and understanding of diverse gender identities.

In conclusion, amending the BNS to ensure gender equality and neutrality is essential to upholding the principles of Article 14. By adopting inclusive language and promoting a culture of respect and acceptance, India can move closer to realizing its commitment to gender equality and non-discrimination.

## **MAJOR CITATIONS**

THE COMSTITUTION OF INDIA ,1950

BHARATHIYA NYAYA SANHITA,2023

THE INDIAN PENAL CODE ,1860

THE JUSTICE VERMA COMMITTEE

NAVTEJ SINGH CASE LAW

VISHAKA VS STATE OF RAJASTHAN

NIRBHAYA CASE

And the acts for women, child, and transgender.

## 9. GENDER JUSTICE AND PROTECTION OF VULNERABLE SECTIONS

### ABSTRACT

*The Bharatiya Nyaya Sanhita (BNS) Act, introduced in 2023, marks significant shift in India's legal landscape, particularly in terms of gender justice and the protection of vulnerable groups. This Act replaces the Indian penal code (IPC) and introduced several genders-sensitive provisions aimed at addressing crimes against women and marginalized genders key features include strengthened punishments for sexual violence, human trafficking, and acid attacks, as well as expanded definitions of sexual harassment to include non-consensual contact and cyber stalking. Despite these advancements, the Act continues to uphold the marital rape exception, highlighting ongoing challenges in achieving comprehensive gender justice. The BNS Act also emphasizes the protection of vulnerable groups, including women and children, by expanding definitions of offences and setting stricter penalties. Overall, the BNS Act represents a progressive step towards a more inclusive and just legal framework in India.*

**Keywords:** *Gender justice, vulnerable groups, Bharatiya Nyaya Sanhita, sexual violence, human trafficking, acid attacks, sexual harassment, cyber stalking, marital rape, legal framework.*

### INTRODUCTION

The introduction of **Bharatiya Nyaya Sanhita (BNS) ACT, 2023** represents a significant milestone in India's legal history. Replacing the long-standing Indian Penal Code (IPC). The BNS Act seeks to address contemporary issues related to gender justice and the protection of vulnerable groups. This Act introduces progressive and gender-sensitive provisions aimed at combating crimes against women and marginalized genders, ensuring a more inclusive and equitable legal framework. This explanation explores the key features, provisions, and implications of the BNS Act, shedding light on its role in promoting gender justice and safeguarding vulnerable groups.

## **GENDER JUSTICE:**

### **Strengthened Punishments for sexual violence;**

One of the most notable features of the BNS Act is the imposition of harsher penalties for sexual violence. The Act recognizes the pervasive issue of sexual violence and aims to create strong deterrent punishments apply to a range of offenses, including rape, sexual assault, and harassment.

### **Rape and sexual assault;**

Under the BNS Act, the definition of rape has been expanded to encompass a broader range of non- consensual activities, reflecting a more comprehensive understanding of sexual violence. The Act mandates severe penalties for perpetrators, including life imprisonment and, in certain cases, the death penalty. By imposing these stringent measures, the Act aims to provide justice for victims and deter potential offenders.

### **Sexual harassment;**

The BNS Act also addresses the issue of sexual harassment, which includes unwelcome advanced physical contact, and verbal or non- verbal conduct of sexual nature. The Act provides for stricter that perpetrators face significant consequences for their actions. This approach aims to create a safer and more respectful environment for women in both public and private spaces.

### **Key provision under BNS;**

The **BHARATIYA NYAYA SANHITA (BNS), 2023** has introduced stringent provisions to address sexual violence, aiming to enhance punishments and ensure justice for victims, key sections relevant to these offenses include:

#### **Section 64: Punishment for rape**

- The section outlines the penalties for committing rape with varying degrees for severity based on specific circumstances:

- **General punishment:** An individual convicted of rape faces rigorous imprisonment for a term not less than ten years, which may extend to life imprisonment, and is also liable to a fine.
- **Enhanced punishment:** Certain aggravating factors result in stricter penalties. These factors include.
  - The perpetrator being a police officer, public servant, member of the armed forces, or staff of a jail, remand home, hospital, or women's or children's institution.
  - Situations where the victim is pregnant, incapable of giving consent, suffers from mental or physical disability, or when the act causes grievous bodily harm, maiming, disfigurement, or endangers the victim's life.
  - Cases involving communal or sectarian violence, abuse of positions of trust or authority, or repeated offenses against the same woman.

### **Section 65: Punishment for rape in certain cases**

This section addresses offenses involving victims below specific age thresholds:

- **Victims under sixteen years of age:** The perpetrator faces rigorous imprisonment for a term not less than twenty years, which may extend to life imprisonment (imprisonment for the remainder of the person's natural life), and is also liable to a fine.
- **Victims under twelve years of age:** The punishment includes rigorous imprisonment for a term not less than twenty years, which may extend to life imprisonment (for the remainder of the person's natural life), and a fine or the death penalty.

### **Expanded definitions of sexual harassment:**

In recognition of the evolving nature of gender-based violence, the BNS Act broadens the definitions of sexual harassment to include non-consensual contact and cyber stalking. This expanded scope ensures that the legal framework adequately addresses modern forms of harassment provides comprehensive protection for victims.

### **Non-consensual contact:**

The inclusion of non-consensual contact in the definition of sexual harassment acknowledges the various ways in which individuals can experience unwanted and invasive physical interactions. This provision aims to protect individuals from physical intrusions that violate their personal boundaries and dignity.

Section 75 of Bharatiya Nyaya Sanhita (BNS), 2023, addresses acts of sexual harassment, including non-consensual physical contact. Specifically, section 75(1)(i) criminalizes “physical contact and advances involving unwelcomes and explicit sexual overtures. “Offenders under this provision may face rigorous imprisonment for up to three years, affine, or both.

### **Cyber stalking:**

The BNS Act recognizes the need to address online harassment. Cyber stalking, which involves the use of electronic means to harass or intimate individuals, is explicitly included in the Act’s definition of sexual harassment. This provision ensures that victims of online harassment have legal recourse and that perpetrators are held accountable for their actions.

Section 78 of Bharatiya Nyaya Sanhita (BNS), 2023, cyber stalking this section applies when a man repeatedly contacts a woman despite her clear disinterest, or monitors her online activity or continue sending message or sending or posting obscene content to victim via electronic media and misusing a victim’s personal information to post an obscene message or comment on electronic media or publishing or sending salacious material via electronic media. First-time Offender may face imprisonment for up to three years, and a fine. Repeat offenders may be sentenced to up to five years imprisonment, and a fine

### **Addressing Human Trafficking and Acid attacks:**

The BNS Act introduces stringent measures to combat human trafficking and acid attacks, two particularly heinous affect women and vulnerable groups.

### **Human Trafficking;**

Human trafficking involves the exploitation of individuals for various purposes, including forced labour, sexual exploitation, and organ traffickers, including long-term imprisonment and substantial fines. Additionally, the Act provides for support services and rehabilitation programs for victims, ensuring that they receive the necessary assistance to rebuild their lives. Under the Bharatiya Nyaya Samhita (BNS), 2023, human trafficking addresses through section 143, providing for strict punishment, including life imprisonment.

### **Acid Attacks:**

Acid attacks are a form of gender-based violence in which perpetrators throw acid or other corrosive substances on victims, causing severe physical and psychological harm. The BNS Act addresses this issue by imposing stringent penalties on offenders and providing comprehensive support for survivors. This includes medical treatment, counselling, and legal aid to help victims recover and seek justice. Under the Bharatiya Nyaya Samhita, 2023, under section 326A, which mandates a minimum ten years imprisonment, extendable to life, with a fine.

### **Protection of vulnerable groups:**

The BNS Act emphasizes the protection of vulnerable groups, including women, children, and marginalized communities. The Act introduces several provisions to ensure that these groups are safeguarded from exploitation and abuse. The ACT focus and strengthens protection for vulnerable groups like women and children by introducing new offenses, revising penalties for existing ones, and addressing emerging crimes like cybercrime and organized crime, with a focus on gender-neutral laws and enhanced punishments for serious crimes.

### **EXPANDING DEFINITIONS OF OFFENSES:**

To provide comprehensive coverage and protection, the BNS Act includes detailed descriptions of offenses related to the exploitation of vulnerable groups. This includes expanding the definitions of child abuse, domestic violence, and elder abuse.

### **Child abuse;**

The BNS Act broadens the definition of child abuse to encompass a wide range of harmful behaviours, including physical, emotional, and sexual abuse. The Act imposes strict penalties on offenders and provides support services for affected children. By addressing the multifaceted nature of child abuse, the Act aims to protect children's rights and ensure their well-being.

### **Domestic violence;**

Domestic violence is a pervasive issue that affects individuals within their homes and intimate relationships. The BNS Act expands the definition of domestic violence to include physical, emotional, and economic abuse. The Act provides for strict penalties for offenders and offers support services for victim, including shelter, counselling, and legal aid. This comprehensive approach aims to protect individuals from abuse and promote healthy and respectful relationships.

### **Elder Abuse;**

Elder abuse involves the mistreatment of older individuals, often by family members or caregivers. The BNS Act recognises the vulnerability of elderly and includes provision to protect them from physical, emotional, and financial abuse. The Act imposes penalties on perpetrators and provides support services for victims, ensuring that older individuals are treated with dignity and respect.

### **Stricter penalties;**

Higher penalties are imposed for crimes against women, children and other vulnerable groups under the BNS Act. This includes longer prison sentences and larger fines for offenders. By implementing these strict measures, the act aims to deter potential offenders and ensure that justice is served for victims.

### **Support Mechanisms;**

The BNS Act provides for mechanisms to support victims, ensuring that they receive the necessary assistance to recover from their trauma and reintegrate into society.

### **Legal Aid;**

The act ensures that victims have access to legal aid, enabling them to navigate the legal system and seek justice. Legal aid services include providing legal representations, assistance with filling complaints and guidance throughout the legal process.

### **Counselling and Rehabilitation;**

The BNS act recognizes the importance of addressing the psychological impact of violence and abuse. The Act provides for counselling and rehabilitation services for victims helping them cope with their trauma and rebuild their lives. These services aim to empower victims and promote their overall well-being.

### **Shelter and Protection;**

The Act ensures that victims have access to safe shelters where they seek refuge from their abuse. These shelters provide a secure environment, along with essential services such as food, clothing, and medical care. Additionally, the act includes provisions for witness protection to safeguard victims and witnesses from retaliation.

### **Challenges and Ongoing issues;**

Despite the progressive nature of BNS act, several challenges and ongoing issues remain. One notable issue is the Act's continuation of the marital rape exception, which exempts non-consensual sex between married partners from being classified as rape. Exception, highlights the need for further advocacy and reform to achieve comprehensive gender justice.

### **Marital Rape Exception;**

The marital rape exception remains a contentious issue in India's legal framework. The BNS act continues to uphold this exception, which means that non-consensual sex within marriage is not recognized as rape. This provision reflects deeply entrenched societal norms and cultural attitude towards marriage and consent. Advocates for gender justice continue to call for the removal of this exception to ensure that all forms of non-consensual sex are recognized and penalized under the law.

### **Implementation and Enforcement;**

The successful implementation and enforcement of the BNS act require continuous monitoring and evaluation. Challenges such as lack of awareness, inadequate training for law enforcement personnel, and societal stigma can hinder the effective application of the Act's provisions. It is essential to address these challenges through targeted interventions capacity-building programs, and public awareness campaigns.

### **Future Directions;**

The BNS act represents a significant step forward in India's legal framework, but continued efforts are needed to address remaining gaps and challenge. Future directions for improving gender justice and the protection of vulnerable groups include.

### **Advocacy and Reform;**

An advocacy and policymakers must continue to push for reforms that address remaining gaps in the legal framework, such as the marital rape exception. Continued advocacy is essential to ensure that the law evolves to reflect changing societal attitudes and needs.

### **Education and Awareness;**

Public education and awareness campaigns are crucial for changing societal attitudes towards gender-based violence and promoting gender equality. These campaigns should target various segments of society. Including schools, workplace, and communities, to foster a culture of respect and equality.

### **Training and capacity building;**

Training and capacity building programs for law enforcement personnel, judicial officers and other stakeholders are essential for the effective implementation of the BNS Act. These programs should focus on enhancing understanding of gender-based violence, developing skills for handling case sensitively, and ensuring that victims receive appropriate support.

### **Collaboration and Partnership;**

Collaboration between government agencies, non-governmental organizations (NGOs), and community-based organisations is vital for addressing gender-based violence and protecting

vulnerable groups. Partnership can help leverage resources share best practices and provide comprehensive support to victims.

### **Monitoring and Evaluation;**

Continuous monitoring and evaluation of the implementation of the BNS act are essential for identifying gaps, assessing the effectiveness of interventions, and making necessary adjustments. Regular assessments can help ensure that the Act's provisions are being applied effectively and that victims receive the support they need.

### **PROTECTION OF VULNERABLE GROUPS UNDER THE BNS ACT, 2023:**

The Bharatiya Nyaya Sanhita (BNS), 2023, which replaces the Indian penal code contains several provisions to protect vulnerable groups in India, such as women, children, scheduled castes (SCs), scheduled tribes (STs), and senior citizen.

#### ➤ **Protection of women;**

- **Offences against women;**

- Section 63; sexual harassment, similar to IPC section 354A.
- Section 64; Acid attacks (IPC 326A).
- Section 69; voyeurism (IPC 354C).
- Section 70; stalking (IPC 354D).
- Section 72; Rape, with similar provision as IPC 375 but new procedural changes.
- Section 73; Gang rape with stricter punishments.
- Section 78; Marriage fraud similar to IPC 493.
- Section 80; Adultery, through it remains decriminalized as per Supreme Court rulings.

#### ➤ **Protection of children;**

- **Offenses against children:**

- Section 68; child sexual abuse (linked to POCSO Act).
- Section 75; child abandonment (previously IPC 317).
- Section 76; kidnapping and child trafficking, with enhanced punishment.
- Section 103; use of children in begging punishable under the new code.

#### ➤ **Protection of scheduled castes (SCs) and scheduled tribes (STs);**

- While the **SC/ST (PREVENTION OF ATROCITIES) ACT, 1989**, continues to provide specific safeguards, BNS 2023 retains provisions for crimes against SCs/STs;
  - Section 108; Atrocities against SCs/STs.
  - Section 113; Wrongful dispossession of land, protecting tribal rights.
- **Protection of senior citizens and disabled persons;**
  - Section 103; Exploitation of senior citizens and persons with disabilities.
  - Section 106; Criminal breach of trust, relevant to financial exploitation of elderly persons.
- **Protection against organized crime and human trafficking;**
  - Section 111; human trafficking, punishable with life imprisonment in severe cases.
  - Section 112; Forced labour and bonded labour, reinforcing constitutional protections.
- **Cybercrime and online exploitation;**
  - Section 106; protection against cyber stalking, online harassment, and identity theft, which particularly affect women, children, and vulnerable groups.

## CONCLUSION

The Bharatiya Nyaya Sanhita (BNS) Act, 2023, is a progressive legislative reform aimed at promoting gender justice and protecting vulnerable groups in India. By strengthening punishments, expanding definition and providing support mechanisms, the act seeks to create a more inclusive and just legal framework. However, continued efforts and reforms are essential to fully achieve these goals and address the remaining challenges. The BNS act represents a significant step towards a safer and more equitable society, where all individual lives live with dignity and respect.

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## 10. BHARATIYA NYAYA SANHITA AND GENDER JUSTICE: EVOLVING LEGAL PROTECTIONS FOR WOMEN AND CHILDREN

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### ABSTRACT

*The Bharatiya Nyaya Sanhita (BNS) took effect on 1st July 2024, unleashing new changes from the former colonial Indian Penal Code. It created significant reforms and changes which keep up with modern India's needs and protection of vulnerable sectors of society. In the 21st century, there is an increased influx of crimes against women and children in the form of revenge porn, trafficking, forced prostitution etc. This paper examines the legal aspects of criminalizing offences against children and women. This paper also inspects the punitive evolution of punishment given to perpetrators of child and women abuse. BNS provides for greater punishment of heinous crimes against children and gives a gender-neutral approach that ensures both female and male children are equally covered under the Act. The BNS introduces harsher punishments for offenses such as kidnapping, exploitation, and sexual crimes against women and children, ensuring a uniform legal framework for both women and children's protection. It consolidates various offenses and simplifies the legal process, which enhances justice enforcement. This paper aims to emphasize the modern criminal justice system and the impact of gender justice and compare the provisional changes from the Indian Penal Code to Bharatiya Nyaya Sanhita. BNS streamlines the classification and criteria for punishment, which implements fairness, inclusivity, and efficiency. From human rights and constitutional perspectives, this paper evaluates whether BNS aligns with India's commitments to international conventions on children's rights and gender justice. The paper concludes by proposing reforms to create a more gender justice centric approach within the BNS framework and also advocates the inclusion of provisions involving punishment for nonconsensual sexual activity between people of the same sex to strengthen the objective of gender justice.*

**Keywords: Bharatiya Nyaya Sanhita (BNS), Gender Justice, Modern Criminal Justice system, Human Rights, Constitutional Perspectives.**

## I. INTRODUCTION

The Indian legal system transitioned into the new modern era by amending the colonial penal code into the Bharatiya Nyaya Sanhita. Its sections are more clearly defined, and punishments for various crimes have been increased, especially for vulnerable sections like children and women. Offences against women and children, which were scattered throughout in IPC, are consolidated clearly under Chapter V of BNS. Many sections and clauses have been streamlined into 358 sections, which are easier to comprehend than the original 511 sections of the IPC.

In the 21st century advanced crimes like cyber stalking, human trafficking, revenge porn, toilet cams, doxing children's identity and location have all become the norm. The era of the internet being accessible to all has improved many people's lives but has also made transmission of sexual crimes easier through the creation of the dark web. BNS was brought forward to ensure that harsher punishments were made to deter criminals and ensure enhanced justice.

## II. THE PUNITIVE EVOLUTION OF PUNISHMENT GIVEN TO PERPETRATORS OF CHILD AND WOMEN ABUSE.

Punitive punishment is necessary for a society to be orderly. As per legal maxim <sup>1</sup> 'Poena and paucos, metus ad omnes perveniat,' which means punishment should reach only a few, but fear should affect all. IPC was revolutionary in the era of British Raj as it consolidated all the punishments and the ingredients of a crime, but in modern India, with internet access and a higher literacy rate, even criminals have great awareness of legal loopholes in criminal laws.

BNS has ensured that certain loopholes in criminal sections are amended so justice can be served. For example, IPC section 493 denotes cohabitation caused by a man deceitfully inducing a belief of lawful marriage. In this section, it states that every man who by deceit makes any woman who is not married to him believe that she is lawfully married to him, which then leads to cohabitation or sexual intercourse with him in that notion, will be punished. In BNS Section 69 states <sup>2</sup> 'that whoever, by deceitful means or by making promise

<sup>1</sup> 4 William Blackstone, Commentaries on the Laws of England Ch. 1 (1765–1770).

<sup>2</sup> Bharatiya Nyaya Sanhita, § 69, Gazette of India, Extraordinary, pt. II, sec. 1 (Ministry of Law & Just., Dec. 25, 2023) (India).

to marry a woman without having any intention of fulfilling the same and is having sexual intercourse with her, this sexual intercourse not amounting to the offence of rape, will be punished under this section'. Under which the explanation for "deceitful means" includes inducement or false promise of employment or promotion, or marrying by suppressing identity. This clearly shows that the scope of punishment has been increased to include devious scheming ways to get sexual intercourse. This inclusion further enhances the protection of women and ensures justice to not only victims of marriage scams but to others who have been victims of deceitful activities as well.

### **A. New Offences Introduced**

There is a significant increase in the level of awareness among individuals involved in criminal activities. The advancement in technology, accessibility of information, and evolving socio-economic dynamics have all contributed to a trend where perpetrators exploit legal frameworks, legal loopholes, and digital tools, which makes it harder for law enforcement to take action. One of the major issues in Indian Society is criminals, especially gangsters, who have taken advantage of the lenient law towards minors. They influence minors in the name of gang pride or manliness and have them commit crimes like murder, rape, theft etc. When caught, these minors often have to take the whole blame for the crime.

<sup>3</sup>A total of 37,780 juveniles were apprehended in 30,555 cases, out of which 33,261 juveniles were arrested under cases of IPC and 4,519 juveniles were apprehended under cases of SLL during 2022. The majority of juveniles in conflict with the law were apprehended under IPC & SLL crimes and were in the age group 16 - 18 years (78.6%) (29,690 out of 37,780) during 2022. <sup>34</sup>A new offence has been constituted under the BNS section 95 which states 'Whoever hires, employs or engages any child to commit an offence will be punished with imprisonment of either description which shall not be less than three years but which may extend to ten years, and with fine; and if the offence has been committed then there shall also be punishment provided for that offence like if the offence has been committed by that person himself.' The offence refers to hiring, employing, engaging, or using a child for sexual exploitation or pornography, which is covered within the meaning of this section. This new

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<sup>3</sup> Ministry of Home Affairs, Gov't of India, Annual Report 2023-2024, at 52 (2024)

<sup>4</sup> Bharatiya Nyaya Sanhita, § 95, Gazette of India, Extraordinary, pt. II, sec. 1 (Ministry of Law & Just., Dec. 25, 2023) (India).

section ensures that criminal masterminds are also apprehended and punished appropriately.

## **B. Punishment Enhanced by BNS**

India's punishments for criminal offences have been reformulated to be appropriate and enhanced for modern society. Aristotle famously quoted <sup>5</sup>“The generality of men are naturally apt to be swayed by fear rather than reverence, and to refrain from evil rather because of the punishment that it brings than because of its foulness”.

The trafficking of women and children is one of the most heinous types of human rights abuse. <sup>6</sup>India is a source, destination, and transit country for labour and sex trafficking. 90% of trafficking in India takes place within the country (intra-state or inter-state), while 10% takes place across national borders. India is a transit country for people being trafficked to the Middle East and other parts of the world, it is also a destination for victims of human trafficking from neighbouring countries like Nepal and Bangladesh.

In IPC section 366A, the procurement of a minor victim was restricted to a girl child, but in BNS section 96, it became applicable to both genders of children as it states <sup>7 8</sup>“Whoever, by any means whatsoever, induces any child to go from any place or to do any act with intent that such child may be, or knowing that it is likely that such child will be, forced or seduced to illicit intercourse with another person shall be punished.

<sup>8</sup>Nearly 1.2 million sex workers in India are under the age of 18, with roughly 40 young girls pushed into prostitution per day. Previously, under IPC section 373, the punishment for a buying a minor for purposes of prostitution was a term which may extend to ten years and a fine but now the punishment for buying a child for purposes of prostitution, etc., under section 99 of BNS has been enhanced from section 373 of IPC by extending the imprisonment term not less than seven years and which may extend to fourteen years and a fine.

<sup>10</sup>Child marriage is a serious violation of children's rights, which exposes them to heightened

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<sup>5</sup> Aristotle, *Nicomachean Ethics* bk. 10, Ch. 9 (W.D. Ross trans., 1925).

<sup>6</sup> National Human Rights Commission, *Trafficking of Women and Children: Challenges and Remedies* 12 (2023) (India).

<sup>7</sup> *Bharatiya Nyaya Sanhita*, § 96, *Gazette of India*, Extraordinary, pt. II, sec. 1 (Ministry of Law & Just., Dec. 25, 2023) (India).

<sup>8</sup> R. Debabrata, *When Police Act as Pimps: Glimpses into Child Prostitution in India*, Manushi, 1998.

risks of violence, exploitation, and abuse. Even though it affects both genders, girls are disproportionately impacted in the majority of cases. Girls married as children face an increased risk of domestic violence, sexually transmitted diseases like HIV/AIDS, and complications from early childbirth, which can lead to death. In India alone, an estimated 1.5 million girls under 18 are married every year, with 16% of adolescent girls aged 15-19 currently married.

<sup>11</sup>BNS took cognizance of the prevalent issue, as they have raised the wife's age to be minimum eighteen to not be considered as rape in section 63 of BNS. Previously in the IPC section 375, there was an exception that stated sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape.

<sup>12</sup>As per NCRB there has been 250 victims of murder with rape/gang rape in India during 2022. <sup>9</sup>Major crimes under 'Crime Against Children' category during 2021 were Kidnapping & Abduction (45.7%) and Protection of Children from Sexual Offences Act, 2012 (39.7%) including child rape. The crime rate registered per lakh children population increased to 36.6 in 2022 compared with 33.6 in 2021.

In IPC there was a distinction in punishment for perpetrators of gang rape of victims aged twelve and sixteen. IPC section 376DA states punishment for gang rape on woman under sixteen years of age and gives punishment with imprisonment for life, which means imprisonment for the remainder of that person's natural life, and with fine. While IPC section 376DB which states punishment for gang rape on woman under twelve years of age awards punishment with imprisonment for life, and with fine, or with death.

BNS consolidates these sections into a sub-section where punishment is awarded uniformly to victims below eighteen. In BNS section 70 (2), which states <sup>10</sup>where a woman under eighteen years of age is raped by one or more persons constituting a group shall be punished with imprisonment for life, which denotes imprisonment for the remainder of that particular

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<sup>9</sup> National Crime Records Bureau, Ministry of Home Affairs, Crime in India Statistics, vol. 1, at 12 (India).

<sup>10</sup> Bharatiya Nyaya Sanhita, § 70(2), Gazette of India, Extraordinary, pt. II, sec. 1 (Ministry of Law & Just., Dec. 25, 2023) (India).

person's natural life, and with fine, or with death''.

### C. Gender Neutrality Aspect of BNS

In IPC, there were many gender-specific differentiations of crimes and certain exceptions that left disparities of justice for female and male children. A notable example is the IPC section 361, which denotes kidnapping from lawful guardianship. It states, 'whoever takes or entices any minor under sixteen years for male, or under eighteen years for female, is said to kidnap such minor or person from lawful guardianship'. Here, there is a clear discrepancy in how perpetrators are classified by the gender and age of victims.

BNS clears this differentiation by section 137 (1)(b), which states <sup>11</sup> <sup>12</sup>'Whoever takes or entices any child out of the keeping of the lawful guardian of such child or person without the consent of guardian is said to have kidnapped a child or person from lawful guardianship.'

<sup>16</sup> The majority of cases registered under crime against children during 2021 were Kidnapping & Abduction, which constituted 45.7%; hence, this amendment is the need of the hour. While kidnapping of Indian children is a major crime, India is also a hotspot of trafficking victims of other nationalities for illicit purposes.<sup>13</sup>BBC Africa Eye uncovered an illegal network that traffics women to India from Africa, where they are forced into sex work to satisfy the demands in Delhi.

Previously in IPC 366B, importation of girl from foreign country states 'whoever imports into India from any country outside India or from the State of Jammu and Kashmir, any girl under the age of twenty-one years with intent that she will be forced or seduced to illicit intercourse with another person, shall be punished'. This section was only limited to foreign girls, but in the recent amendment, section 141 of BNS states <sup>14</sup>'whoever imports into India from any country outside India, any girl under the age of twenty-one years or any boy under the age of eighteen years with intent that girl or boy will be forced or seduced to illicit intercourse with another person, shall be punished'. This section ensures both girl and boy

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<sup>11</sup> Bharatiya Nyaya Sanhita, § 137(1)(b), Gazette of India, Extraordinary, pt. II, sec. 1 (Ministry of Law & Just., Dec. 25, 2023) (India).

<sup>12</sup> National Crime Records Bureau, Ministry of Home Affairs, Crime in India Statistics, vol. 1, at 12 (India).

<sup>13</sup> BBC Africa Eye, Illegal Network Trafficking African Women to India for Sex Work (BBC News Dec. 16, 2019) (documentary).

<sup>14</sup> Bharatiya Nyaya Sanhita, § 141, Gazette of India, Extraordinary, pt. II, sec. 1 (Ministry of Law & Just., Dec. 25, 2023) (India).

victims are applicable. It enforces a stronger punishment to be imposed on offenders and makes it easier for FIRs to be registered.

In IPC, there was always an assumption that men were only capable of committing crimes like disrobing and voyeurism. For instance, IPC section 354B denotes assault or use of criminal force to a woman with intent to disrobe. It clearly states, ‘any man who assaults or uses criminal force to any woman or abets such act with the intention of disrobing or compelling her to be naked, shall be punished’. This gender specific offender or perpetrator can also be seen in IPC section 354C which denotes voyeurism, where it also clearly states ‘any man who watches, or captures the pictures of a woman who is engaging in a private act where usually she would have the expectation of not being seen by the perpetrator or by any other person on behalf of the perpetrator or anyone who disseminates such image shall be punished.

It is important to note that even women are capable of committing crimes like this against other women. In <sup>15</sup>2023, A woman was arrested for placing a hidden camera used for recording purposes in a bathroom shared with four roommates in a paid guest accommodation in Chandigarh. The accused woman was arrested along with her boyfriend, and upon questioning, she confessed to placing the camera and pleaded with the police for leniency. That’s why in BNS section 76 and section 77, there are gender neutral perpetrators. For instance, section 76 of BNS states, ‘ whoever assaults or uses criminal force to any woman or abets such act with the intention of disrobing or compelling her to be naked, shall be punished.’ Section 77 of BNS states, ‘ whoever watches or captures the image of a woman engaging in a private act in circumstances where usually she would have the expectation of not being seen by the perpetrator or by any other person on behalf of the perpetrator or who disseminates image will be punished.’ Gender neutrality of certain sections ensures effective justice for victims of both genders and for registering FIRs for apprehending criminals.

### **III. BNS ALIGNMENT WITH INDIA’S COMMITMENTS TO INTERNATIONAL CONVENTIONS ON CHILDREN’S RIGHTS AND GENDER JUSTICE**

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<sup>15</sup> Satender Chauhan, Woman Arrested for Placing Hidden Webcam in Bathroom of Chandigarh PG, India Today (Nov. 29, 2023), <https://www.indiatoday.in/cities/chandigarh/story/woman-arrested-placing-hidden-camera-pg-bathroom-chandigarh-2469105-2023-11-29>.

BNS is a revolutionary law that is committed to the various obligations that are safeguarded by the constitution and conventions that are ratified by India. The conventions that India has ratified include <sup>16</sup> <sup>17</sup>United Nations Convention on the Rights of the Child (UNCRC), <sup>21</sup>Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979 and <sup>18</sup>Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

Gender justice can only be achieved when certain fundamental rights like Article 14, which denotes equality before the law; Article 15, which prohibits discrimination on grounds of religion, race, caste, sex, or place of birth; and Article 21, which is the protection of life and personal liberty, are upheld. As per Article 24, children under fourteen are protected against exploitation in the name of employment. In the directive principles of state policy, the state endeavours to safeguard and protect the well-being of its citizens. Article 39(e) elucidates that the tender age of children is not to be abused, and Article 39(f) ensures that children and youth are protected against exploitation and moral and material abandonment. BNS is formulated to uphold these basic principles and guidelines for the people living in India.

### **A. India's Commitment to International Conventions Through BNS**

It has been 32 years since India ratified the <sup>19</sup>UN Convention on the Rights of the Child (UNCRC) on December 11, 1992. India is legally committed to upholding children's rights in areas such as education, healthcare, protection from exploitation, and participation in society. BNS has been drafted in such a way that it protects the articles of this convention. For instance, <sup>20</sup>Article 19 of UNCRC states 'parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all types of physical or mental violence, injuries or abuses, negligent treatment, exploitation, which also includes sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the

<sup>16</sup> Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3.

<sup>17</sup> Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13.

<sup>18</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Nov. 15, 2000, 2237 U.N.T.S. 319.

<sup>19</sup> Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3.

<sup>20</sup> U.N. Convention on the Rights of the Child, art. 19, Nov. 20, 1989, 1577 U.N.T.S. 3.

care of the child'. <sup>21</sup>BNS enforces this through various sections, like Section 96, which denotes the procurement of a child for illicit purposes. The definition of child has been included in BNS to ensure that both female and male children are covered under this act and there are no discrepancies concerning them.

In the convention on the <sup>22</sup> <sup>23</sup>Elimination of all Forms of Discrimination Against Women, Article 6 states that parties shall take all appropriate measures, including legislation, to suppress all types of traffic of women and prevent exploitation of prostitution in women. <sup>27</sup>BNS upholds it through the formation of Section 69, which punishes sexual intercourse by employing deceitful means, etc. This helps to prevent prostitution and apprehend criminals who take advantage of women through promises of marriage, as many women are warped into prostitution through marriage or employment fraud. <sup>24</sup>The National Human Rights Commission (NHRC), India has taken a serious cognizance of social evil in the form of 'Nata Pratha' under which the girls in some communities are sold on a stamp paper or in the name of marriage having no legal obligations in parts of Rajasthan and the adjoining areas in the States of Madhya Pradesh, Uttar Pradesh and Gujarat. The research wing observed that the 'Nata Pratha' is a modern form of prostitution.

<sup>29</sup>In the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the UN convention against Transnational Organized Crime Article 3 states that trafficking in persons means the recruitment, transportation, transfer etc. where means of threats or usage of force or other forms of coercion, abduction, fraud, deception, abuse of power or a position of vulnerability or receiving of payments or benefits to get the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, etc. <sup>25</sup> <sup>26</sup>BNS enforces

<sup>21</sup> Bharatiya Nyaya Sanhita, § 96, Gazette of India, Extraordinary, pt. II, sec. 1 (Ministry of Law & Just., Dec. 25, 2023) (India).

<sup>22</sup> Convention on the Elimination of All Forms of Discrimination Against Women, art. 6, Dec. 18, 1979, 1249 U.N.T.S. 13.

<sup>23</sup> Bharatiya Nyaya Sanhita, § 69, Gazette of India, Extraordinary, pt. II, sec. 1 (Ministry of Law & Just., Dec. 25, 2023) (India).

<sup>24</sup> National Human Rights Commission, India, Press Release, NHRC Takes a Serious View of 'Nata Pratha' Practice, New Delhi (June 6, 2024).

<sup>25</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, art. 3, Nov. 15, 2000, 2237 U.N.T.S. 319.

this principle by section 141 which states importation of girl or boy from foreign country, whoever imports into India from any country outside India, any girl under the age of twenty-one years or any boy below the age of eighteen years with intention that girl or boy will be forced or seduced to illicit intercourse with another person, will be punished. This law protects both genders instead of the previous section 366B of IPC, which only protected girls.

### **III. SUGGESTED REFORMS IN BNS FRAMEWORK**

While BNS has created many reforms, it has forgotten certain gender justice aspects, which are the creation of laws that prohibit and criminalize nonconsensual sexual activity between people of the same sex. It is necessary to strengthen the objective of gender justice. It is not always safe to assume that only men are capable of sexual assault on women. Currently in many countries including India trends of rape done by same sex is seen. Children are protected by POCSO which criminalizes all sexual intercourse of minors but for adults, same sex rape has no punishment as section 377 of IPC is not substituted nor brought forward. It is important to note that even unnatural offences against animals are not included in BNS.

#### **A. Importance of criminalizing nonconsensual sexual intercourse of same sex**

Rape done by same sex is not as frequent as rape done by men on women, but still it should be regarded as heinous crime that violates a person. It has occurred worldwide and is especially prevalent in prisons. <sup>27</sup> <sup>28</sup>Johnson's study found that homosexuality was not a devastating epidemic but rather an adaptation to prison life. He suggested that the constant contact among inmates caused life to be predicted on homosexualized group contact. <sup>32</sup>Kassebaum (1972) said sexual affairs were coercive and commercial. Coercive relationships were those when a person gave in to the requests of others out of fear of threatened violence. He also found that approximately 50 percent of women inmates had had some form of inprison sexual experience.

Section 377 IPC was partially struck down for being violative of Article 14 of the

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<sup>26</sup> Bharatiya Nyaya Sanhita, § 141, Gazette of India, Extraordinary, pt. II, sec. 1 (Ministry of Law & Just., Dec. 25, 2023) (India).

<sup>27</sup> E.H. Johnson, *The Homosexual in Prison*, 1 Soc. Theory & Prac. 83, 83-97 (1971).

<sup>28</sup> G.G. Kassebaum, *Women's Prison*, 1-2 (1972).

Constitution. In <sup>29</sup>Navtej Singh Johar v. Union of India (2018), the Supreme Court held that if anyone, both a man and a woman, engages in any kind of sexual activity with an animal, then that part of Section 377 is constitutional, and it will remain a penal offence. Any act of the description covered under section 377 IPC done between two individuals without the consent of any one of them would constitute penal liability. Even bestiality is not mentioned in the new BNS, which is extremely degrading to animal rights and humanity. It is an urgent need of hour to create a provision that protects the victims of same sex rape and ensure that offenders are punished accordingly.

## V. CONCLUSION

BNS has revolutionized the modern legal system by enhancing punishments, creating gender neutral victims and perpetrators. Its sections, which are streamlined and simplified, have created an effective criminal law that makes FIRs, investigation, and legal proceedings uniform. BNS has fulfilled its commitment to the various obligations that are safeguarded by the constitution and conventions that are ratified by India. The conventions that India has ratified include United Nations Convention on the Rights of the Child (UNCRC), Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979 and Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. It has enhanced punishment for heinous crimes against children and women where it has gotten rid of discrepancies of gender specific punishments. However, it has forgotten entirely about nonconsensual sexual intercourse of same sex. Loopholes like these are what criminals exploit to do their crimes. I conclude this by stating that while BNS is a great.

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<sup>29</sup> Navtej Singh Johar v. Union of India, (2018) 10 SCC 1.

## 11. LEGAL ASPECTS OF BHARATIYA NYAYA SANHITA AND ITS IMPACT ON THE INDIAN CRIMINAL JUSTICE SYSTEM - KEY LEGAL PROVISIONS AND DOCTRINAL SHIFTS IN BNS

Jahnavi Nuvvula (1)

### ABSTRACT

*The Bharatiya Nyaya Sanhita (BNS) 2023 came into effect on July 1, 2024, after being passed by Parliament in December 2023 to replace the Indian Penal Code (IPC). BNS consolidates several scattered provisions of the IPC and reduces the number of sections from 511 to 358, enumerated under 20 chapters. BNS introduces several new offenses and removes some from the IPC. It makes sexual offenses gender-neutral, expands jurisdiction beyond India, introduces community service as a new form of punishment, and establishes minimum mandatory punishments. However, under Section 152, sedition makes a backdoor entry. Although the term "sedition" is removed from the IPC, it is replaced in a more stringent manner in BNS. Some provisions prescribe punishment with two different articulations, creating confusion about legislative intent. Additionally, the term "community service" is not defined anywhere. This paper attempts to discuss these ambiguities within BNS. Furthermore, this paper highlights key legal provisions where BNS has taken progressive steps to provide a more relevant and effective legal framework, emphasizing the shift from punitive to restorative justice.*

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### INTRODUCTION

The BNS came into effect on July 1, 2024, after being passed by Parliament in December 2023. The Ministry of Home Affairs constituted a committee headed by Professor Dr. Ranbir Singh, former Vice-Chancellor of National Law University, Delhi, to review the three criminal laws. The BNS repealed the IPC, 1860, which was drafted by the First Law Commission chaired by T.B. Macaulay.

## History <sup>(2)</sup>

The Bharatiya Nyaya Sanhita was introduced on August 11, 2023, to replace the IPC. It was examined by the Standing Committee on Home Affairs. After incorporating certain recommendations, the BNS was reintroduced on December 12, 2023.

## Key Features

BNS largely retains the provisions of the IPC, adding new offenses while removing certain offenses that courts have struck down. It also increases penalties for several crimes and provides for minimum mandatory punishments.

## Key Changes in Definitions <sup>(3)</sup>

- Many definitions have been merged and listed alphabetically in Section 2.
- "Minor" has been replaced with "child." Section 2(3) defines a "child" as a person below 18 years of age.
- "Insane" has been replaced with "person with an unsound mind."
- Section 2(10) defines "gender" to include "transgender," as per the Transgender Act, 2019.
- Section 2(8) defines "document," including electronic and digital records.
- Section 2(20) states that months and years are to be reckoned according to the Gregorian calendar instead of the British calendar.

See online <sup>(2)</sup>

Bharatiya Nyaya Sanhita ,2023<sup>(3)</sup>

## Extended Jurisdiction

- Section 48 criminalizes the abetment of a criminal act occurring within India from outside India.

## New Offenses in BNS<sup>(4)</sup>

- **Terrorism** – Section 113
- **Mob Lynching** – Section 103
- **Snatching** – Section 304 (distinct from theft)

- **Organized Crime** – Section 111, including activities such as:
  - Kidnapping
  - Robbery
  - Land grabbing
  - Contract killing
  - Economic offenses (e.g., fraud, forgery, hawala transactions, counterfeiting, defrauding banks)

### **Petty organised crime**

Any crime that causes general feelings of insecurity that create network of contacts, anchor points and logistical support among citizens relating to

- theft from vehicle,
- theft of vehicle,
- domestic and business theft,
- trick theft,
- cargo crime,
- theft (attempt to theft, theft of personal property),
- organised pickpocketing,
- theft through shoplifting,
- theft through shoplifting,
- theft through card skimming,
- ATM theft,
- illegal selling of tickets,
- selling of public exam question papers.

such other common forms of organised crimes when committed by mobile organised crime groups or gangs that create a network of contacts, anchor points and logistical support among themselves to carry out a number of in a region over a period.

It is used to be noted that both commission and attempt to commit such crime is made punishable with the same period of imprisonment and fine.

Section 152 of BNS criminalises acts that endangered the sovereignty, unity, integrity of

India. Section 69 of BNS provides punishment for sexual intercourse by deceitful means.

### Gender Neutrality

- Section 96 (Procuration of a Child) is now gender-neutral.
- Section 141 criminalizes the importation of a girl or boy from a foreign country for illicit purposes.

### Offenses Against Women and Children

All offenses against women and children have been consolidated under a single chapter.

### Repealed Offenses <sup>(5)</sup>

- **Attempt to Commit Suicide** (Section 309)
- **Sedition** (Section 124A of IPC)
- **Thug** (Sections 310 and 311)
- **Unnatural Offenses** (Section 377)
- **Lurking House Trespass by Night** (Section 444)
- **Adultery** (Section 497)

### Bharatiya Nyaya Sanhita ,2023<sup>(4)</sup> Indian penal code bare Act <sup>(5)</sup>

- **Offenses Related to False Weights** (Sections 264-267)
- **Mere Possession of Fake Currency** (Section 242 of IPC) – Now punishable only if there is intent to use it.

### Missing Offenses <sup>(6)</sup>

section 377 of IPC is totally struck down, sodomy and Bestiality will not be an offence.

### Revised Punishments

#### Community Service

Community service has been introduced for specific offenses, reflecting a reformative approach. However, the term "community service" is not defined in BNS. It applies to six offenses, including:

**Section 202** – Public servant unlawfully engaged in trade

**Section 209** – Non-appearance to a proclamation

**Section 226** – Attempt to commit suicide to compel or restrain lawful power

**Section 303(2)** – Theft (if the value is below ₹5000 and property is restored, community service is the sole punishment)

**Section 355** – Public misconduct by a drunken person

**Section 356(2)** – Defamation

However community service is not an alternative punishment except under section 303(2).

Under **Section 303(2)**, community service is the sole mandatory punishment. Sections 8(4) and 8(5) outline the consequences of failing to complete community service.

## **BNS,2023 <sup>(6)</sup>**

### Minimum Mandatory Punishment

- The duration of imprisonment has been increased for 33 offenses.
- 23 offenses now have minimum mandatory punishment thresholds that cannot be reduced.

### **Overlap Between BNS and Special Laws**

Some offenses in BNS overlap with existing special laws, such as:

- **Food Adulteration** – Covered under both BNS (Sections 274-275) and the Food Safety and Standards Act, 2006.
- **Drug Adulteration and Sale** – Sections 276-277 of BNS conflict with the Drugs and Cosmetics Act, 1940.
- **Unlawful Compulsory Labor** – Section 146 of BNS overlaps with the Bonded Labour System (Abolition) Act, 1976.
- **Child Abandonment** – BNS Section 93 overlaps with the Juvenile Justice Act, 2015.
- **Terrorism** – Section 113 of BNS is covered under UAPA, 1967.
- **Organized Crime** – Section 111 is already covered by MCOCA, 1999.

### **Challenges**

- Judges have discretionary powers regarding community service punishment.
- No clear structure for monitoring community service implementation.
- The lack of clarity in "life imprisonment" terminology creates confusion about

legislative intent.

### **Conclusion**

While BNS is not a complete overhaul of IPC, many provisions have been retained with modifications. Many sections appear to be copied from IPC with minor changes. Two different articulations in life imprisonment create confusion about legislative intent. Differences in punishment between murder and murder by life convict becomes pointless. Moreover, Section 152 must not become a proxy for sedition laws. Community service represents a progressive step toward restorative justice, but successful implementation requires clear guidelines for monitoring execution.

## 12. GENDER JUSTICE AND PROTECTION OF VULNERABLE SECTIONS

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### ABSTRACT

*There are many issues, and challenges faced by women in India. Vulnerable sections of society and a group of people who face challenges daily there is inadequate livelihood in social and economic variations. Vulnerable sections include women, children, minorities, transgender, disabled peoples, and specific marginal communities facing discrimination, etc... These groups require special protection for the well-being and rights of the people. Society needs to work towards giving equal employment opportunities creating policies and awareness for the welfare of the people and considering them for solving their issues and the things that affect them. Women are considered vulnerable due to the ancient system of gender inequalities in certain cultures and they possess the higher risk of leading life in a society and facing unequal treatment, and limited access to work. Equality, racial and caste discrimination, and higher risk of violence, sexual exploitation, and sexual harassment in society. These challenges impact their education, decision making power, career, and mental health of their entire life. Efforts must be made to solve the problems and promote gender equality. improving women's rights and creating a safe environment for women to live. In this society, the third genders are also referred to as transgender or non-binary individuals. They have faced challenges such as discrimination, sexual harassment, increased rate of violence, and lack of legal recognition and they face the difficulties that elegance employment opportunities for women in India. This research paper explains issues related to social and economic problems related to women and their safety. The challenges each vulnerable group faces in all fields of education, health, and employment opportunities in the field of uniform services. This paper focuses on the strategies to formulate policies and the issues faced by vulnerable groups and promote equality among people in our country.*

**KEYWORDS:** *Vulnerable sections, Challenges, Women, Discrimination, and the Struggles of their life.*

## **INTRODUCTION:**

Gender justice is a concept that promotes the full realization of rights and opportunities for all genders. It seeks to realize equality between men and women, as well as between diverse gender identities, in terms of rights, responsibilities, and opportunities. It is a holistic approach that addresses the root causes of gender discrimination and ensures that women and other gender minorities are not excluded from the full enjoyment of their human rights.<sup>1</sup> There are a lot of vulnerable sections in society. Women, children, members of scheduled castes and tribes, those with physical disabilities, and transgender individuals are all included. They are facing many challenges and discrimination in society. They are exploited and treated as slaves in this society and are also dominated in society. Treating everyone equally is justice and that justice should reach all people. Women are emotionally dominated and demotivated by their families and society. They are also forced to get married at a younger age before completing their college studies. Hence, they are not able to focus on their career. Some of them are also forced to enter prostitution. Children are treated as child labourer, though it is illegal. As a result, they became uneducated. They are also forced to work as bonded labourer. The scheduled caste /scheduled tribes were previously denoted as untouchability. They faced many challenges and hazards in society, till now. They are dominated by the other class people. Physically challenged people face employment barriers and social discrimination. They are also affected by the social stigma, lack of awareness, and access to education and health care.

## **LITERATURE REVIEW:**

This concept converges in a multidimensional consideration of vulnerability linked to a situation or process where exposure to risk (both endogenous and exogenous); the inability to respond; and the adaptation/recovery of groups, individuals, households, communities, etc. exposed to external and internal situations that affect their lives, capacities, and their ability to exercise rights (*Busso, 2001*).

Researchers have proven that Indian rape laws prioritize the experiences of female victims above those of male and non-binary survivors. Theoretically gender neutral, Indian rape laws

have been criticized for being gender biased in practice. (*Kumar.V, 2014*).

The nations of risk, inability to respond, and adaptation have an inherent structure, situation, and relational nature (*Virokannas, Liuski, and Kuronen, 2018*). Exposure to risk:(i) refers to how certain events or incidents lead to consequence for individual or groups whereas the inability of each individual or group to respond; (ii) Refers to three different aspects: the availability and access to resources or assets (quantity, quality, and variety), the strategies, and the means for coping with these events. Proposals aimed at addressing vulnerability in terms of situations (*Virokannas, Liuski and Kuronen, 2018*), rather than the idea of vulnerability associated with individuals or groups, would facilitate development measures that address gender inequality by identifying the situation. The visualization of the structural nature of gender inequality in the recognition and approach to vulnerability is key for building capacities and not aggravating the situation of vulnerability itself.

### **BHARATIYA NYAYA SANHITA:**

The Bharatiya Nyaya Sanhita (BNS) replaces the Indian Penal Code (IPC) and introduces several legal reforms that significantly impact the Indian criminal justice system. Here's an overview of its legal aspects and implications:

#### **Legal Aspects of BNS:**

##### **Modernization of Criminal Laws**

The Bharatiya Nyaya Sanhita (BNS) updates many outdated provisions of the Indian Penal Code (IPC) to align with contemporary legal standards and societal needs.

##### **Focus on Organized Crime and Terrorism**

The BNS introduces new provisions aimed at effectively tackling organized crime, terrorist acts, and transnational crimes.

##### **Stronger Provisions Against Mob Lynching**

It defines and criminalizes mob lynching, an act that was not explicitly covered in the IPC.

#### Expanded Definition of Crimes Against Women

The BNS enforces stricter punishments for sexual offenses and includes new provisions related to crimes against women.

#### Digital and Cyber Crimes

The legislation recognizes cybercrimes and expands legal provisions to address them, which were previously inadequately covered in the IPC.

#### Revised Punishments

Some crimes now carry increased punishments, while others have provisions for community service and alternative sentencing.

#### Speedy Justice and Simplified Legal Procedures

The BNS aims to expedite trials and reduce case pendency through revised legal frameworks.

#### Impact on the Indian Criminal Justice System:

##### Enhanced Efficiency

Streamlining procedures and integrating digital tools aim to reduce delays in the justice system.

##### Better Protection for Victims

Expanded victim rights and stricter laws concerning crimes against vulnerable groups enhance the delivery of justice.

##### Challenges in Implementation

Law enforcement and judicial institutions will require time and resources to adapt to the new legal framework.



### Potential for Misuse

Certain provisions, such as those dealing with sedition and cybercrimes, could be misused if not implemented with appropriate safeguards.

### Alignment with Global Standards:

The BNS attempts to align Indian criminal law with international human rights norms and technological advancements. The Bharatiya Nyaya Sanhita (BNS) represents a significant effort to modernize and enhance the framework of India's criminal justice system. This legislative initiative seeks to address contemporary challenges and inefficiencies within the system, aiming to provide a more comprehensive and accessible approach to justice. Key objectives include streamlining legal processes, ensuring quicker trial timelines, and safeguarding the rights of both victims and accused individuals. However, the success of the BNS will largely depend on its effective implementation and the establishment of robust judicial oversight. Without proper enforcement mechanisms and the commitment of law enforcement agencies, the intended reforms might not lead to meaningful improvements. Additionally, ongoing training and resources for legal professionals will be crucial in adapting to the new provisions outlined in the BNS. Overall, while the BNS presents a progressive step forward, its impact will ultimately hinge on the dedication to uphold the principles of justice and fairness in practice.

### DIFFERENCE BETWEEN BNS AND IPC:

ASPECTS	IPC	BNS
Full form	Indian Penal Code.	Bharatiya Nyaya Sanhita.
Enacted	1860.	2023.
Sections	511.	358.
Chapters	23 chapters.	20 chapters.
Introduced by	Lord Maculay.	Ranbir Singh.
Theory	Deterrent and retributive.	Reformative.

Committee formed	1860.	2023.
Implementation	2 <sup>nd</sup> January 1860.	1 <sup>st</sup> June 2024.
Language	English terms.	Indianized terms.
Terrorism	There is no section for terrorism.	Terrorism defined under section 113.
Mob lynching	IPC has no sections.	BNS has 117(4). And 103(2)
False FIR	There are no strict punishments.	It has Section 215 which provides up to 7 years imprisonment for filing false FIR.
Community service	IPC has punishment like death sentences, imprisonment for life, imprisonment - rigorous, simple, forfeiture of property, fine. It does not include community services.	BNS included community service.
Objective	To punish the offenders.	To reform offenders.
Station limit	Within a territory	Beyond a territory
Forensic evidence	Forensic evidence is not mandatory.	Forensic evidence is mandatory.

**PROBLEMS FACED BY VULNERABLE SECTIONS:**

**WOMEN:**

Women often face significant emotional pressure and are discouraged from being independent due to societal structures that enforce discrimination and dominance in family, work, and education. These deeply rooted barriers hinder their career and educational pursuits. While strong family connections can offer support, they may also create vulnerabilities. Additionally, societal norms that portray women as the "weaker" sex can lead to exploitation by men who seek to assert dominance.

Women often face violence and harassment from men, leading to fear and vulnerability. This threat increases their dependency on male figures, especially in contexts of limited education and early marriages. Many are trapped in cycles of dependency due to a lack of financial independence. After marriage, challenges intensify with societal pressures related to dowry, harassment from husbands or in-laws, and issues like domestic violence. Cultural practices, such as arranged and child marriages, along with taboos surrounding divorce, reinforce control over women. Despite progress, working women still struggle with traditional family obligations in patriarchal societies, where the division of labor persists. Moreover, violence and harassment against women continue to rise, highlighting the urgent need for societal change, as this issue affects women across all ages and backgrounds.

### **CHILDREN:**

Children represent one of the most vulnerable segments of society. Their age leaves them particularly susceptible to various risks, including abuse, sexual harassment, violence, and exploitation through child labor. This vulnerability is further intensified for those with physical or mental disabilities, which often limit their opportunities and expose them to additional dangers. For instance, poor children, along with orphans, may be subjected to conditions akin to slavery as they are forced into labor. In extreme cases, they can be trafficked to foreign countries, where they are compelled to work in affluent households or exploitative industries as bonded laborers. The financial struggles faced by their families can drive these children into the workforce at an early age, stripping them of their childhood and the opportunity for education.

All children, due to their inherent developmental stage, are particularly at risk for exploitation, abuse, violence, and neglect. However, those in exceptionally challenging situations— such as orphans, street children, refugees, child workers, and those trapped in sexual exploitation or poverty—experience heightened vulnerability. It is essential to recognize that vulnerability cannot be ascribed solely to age; it is a multifaceted condition shaped by numerous social, economic, and environmental factors. While the term "vulnerable children" typically refers to a specific age group, we must understand vulnerability as a broader concept that encompasses various circumstances and challenges that significantly

impact the lives of children, calling for urgent attention and action to safeguard their well-being.

### **SCHEDULED CASTES AND SCHEDULED TRIBES:**

Historically, individuals belonging to Scheduled Castes were labeled as "untouchables," a term that reflects the deep-rooted social stigma they faced. Both Scheduled Castes and Scheduled Tribes represent communities that have been marginalized and disadvantaged within society. During the period of British colonial rule in India, Scheduled Castes were classified as a "depressed class," often relegated to menial jobs such as manual laborers, sweepers, and sanitation workers. This employment was not only economically restrictive but also served to reinforce the social hierarchy that discriminated against them. The discrimination faced by Scheduled Caste communities was pervasive, extending into many aspects of daily life. They were systematically denied access to educational opportunities, which restricted their ability to improve their socioeconomic status. Additionally, they were prohibited from entering temples and participating in religious practices alongside members of higher castes, which further marginalized their cultural and spiritual identities.

In contemporary society, some castes continue to be recognized as Scheduled Castes, while various tribal communities are classified as Scheduled Tribes. Unfortunately, individuals from these groups still grapple with a range of systemic challenges that hinder their progress. These challenges include:

- Social Disparities
- Economic Disparities
- Religious Disparities
- Political Disparities

### **Scheduled Tribes (ST):**

Scheduled Tribes consist of indigenous and tribal communities that have been historically isolated, both geographically and culturally. These communities often live in remote areas and have distinct traditions, languages, and socio-economic structures. They are granted

reservations and special welfare programs to uplift them.

### **PHYSICALLY CHALLENGED PEOPLE:**

People with physical disabilities face significant challenges in society, including employment discrimination and limited career advancement, leading to negative stigma and poor health due to financial constraints. Feelings of inferiority may also arise. The Indian Constitution includes provisions to promote the welfare and rights of individuals with physical disabilities.

### **VARIOUS SCHEMES FOR WOMEN:**

**Beti Bachao Beti Padhao (2015)**

**Pradhan Mantri Matru Vandana Yojana (2010)**

**Mahila Shakti Kendra (2017)**

**Ujjawala (2016)**

### **PROVISIONS FOR WOMEN:**

**Article 15(3)** – Prohibits discrimination against sex. (State can make special provisions for women)

**Article 23** - Right to be protected against Trafficking and forced into bonded labour.

**Article 39(a)** - State to ensure that men and women equally have the right to an adequate means to livelihood.

**Article 39(d)** - States that equal pay should be given to women for equal work. ,

**Article 42** – Provisions for just and humane conditions of work and maternity relief.

**Article 243D** - Provides for reservation of seats in panchayat levels for women.

New Criminal Laws have several provisions relating to sexual harassment Bharatiya Nyaya Sanhita (BNS) has Section 75 - (if a man demands sexual favors or shows pornography

against the will of women or makes sexually colored remarks shall be guilty of the offense of sexual harassment). To prohibit voyeurism BNS has Section 77 - (Whoever watches or captures the image of a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed by others).

Various Committees have been implemented for the safety of Women in the Workplace, Schools, and Colleges like the Prevention of Sexual Harassment (POSH) Committee. It is an internal committee that handles complaints of Sexual Harassment at the workplace and Educational Institutions. Commissions like the National Commission for Women were Set up in 1992 to review the Constitutional and legal safeguards for Women. United Nations Organization has Committees that focus on Women's Rights including the Committee on the Elimination of Discrimination against Women (CEDAW) which monitors the implementation of the Convention on the Elimination of all Forms of Discrimination against Women.

#### **PROVISIONS FOR CHILDREN :**

**Article 15(3)** - states can make special provisions for the betterment of children.

**Article 21A** - states to provide free and compulsory education to all children in the age group of six to fourteen years.

**Article 23**-right to being protected from being trafficked and forced into bonded labour. \*

**Article 24**-prohibition on employment of children below the age of 14 years of age in factories.

**Article 45**- the state to provide early childhood care and education for all children until they reach the age of six years.

To avoid the selling of children for prostitution BNS has Section - 98. To avoid buying of child for the purpose of prostitution BNS has Section- 99

#### **CONSTITUTIONAL PROVISIONS FOR SC/ST:**

India's Constitution provides special protections for Scheduled Castes (SCs) and Scheduled Tribes (STs) to address historical injustices and promote social equality.

**Article 341** (Scheduled Castes) & **Article 342** - (Scheduled Tribes) The President of India, in consultation with the Governor, can specify which communities belong to SC or ST categories.

**Article 15(4)** - Allows special provisions for Scheduled Caste & Scheduled Tribes in education and welfare.

**Article 17** - Abolishes untouchability and makes its practice a punishable offense. · **Article 330 & 332** → Reservation of seats for Scheduled Caste & Scheduled Tribes in the Lok Sabha (Parliament) and State Assemblies.

**Article 335** - Consideration of Scheduled Caste & Scheduled Tribes interests in government employment while maintaining administrative efficiency.

**Article 16(4)** - Allows reservations for Scheduled Caste & Scheduled Tribes in government jobs.

**Article 46** - The State must promote the educational and economic interests of SCs & STs.

#### **IMPORTANT CASE LAW :**

##### **Protection Against Discrimination**

##### **State of Madras v. Champakam Dorairajan (1951)**

**Issue:** Whether caste-based reservations violated fundamental rights.

**Ruling:** The Supreme Court struck down caste-based reservations but led to the First Constitutional Amendment, introducing Article 15(4) to allow special provisions for Scheduled Caste & Scheduled Tribes.

##### **Reservation in Promotions**

##### **Indra Sawhney v. Union of India (1992)**

**Issue:** Whether reservations should apply to promotions.

**Ruling:** Reservations in promotions were not allowed under Article 16(4), but Parliament later amended the Constitution to restore them.

### **Nagaraj v. Union of India (2006)**

**Issue:** Whether SC/STs should get reservations in promotions.

**Ruling:** Upheld reservations in promotions but required proof of backwardness and administrative efficiency.

### **Subhash Kashinath Mahajan v. State of Maharashtra (2018)**

**Issue:** Alleged misuse of the Scheduled Caste & Scheduled Tribes Act by filing false cases.

**Ruling:** The court diluted automatic arrest under the Scheduled Caste & Scheduled Tribes Act, but Parliament later restored the original provisions. Reservation policies in education, jobs, and legislatures help uplift these communities. Judicial rulings have shaped and refined Scheduled Caste & Scheduled Tribes policies over time.

## **PROVISIONS FOR PHYSICALLY CHALLENGED PEOPLE :**

### **Article 14 - Right to Equality**

Article 14 ensures equality before the law and prohibits discrimination, including against individuals with physical disabilities.

**Article 15 - Prohibition of Discrimination** Article 15 prohibits discrimination based on religion, race, caste, sex, place of birth, and, since 2016, disability, ensuring equal treatment for people with physical disabilities.<sup>1</sup>

<sup>3</sup>Rama Subramani, P., Krishnamoorthy, Y., Vijayakumar, K., & Rushender, R. (2024). Burden, trend and determinants of various forms of domestic violence among reproductive

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<sup>1</sup> Mog, M., Neogi, D., Ghosh, K., & Chakraborty, A. S. (2023). Prevalence and determinants of intimate partner violence against women in India.

age-group women in India: findings from nationally representative surveys. *Journal of Public Health*, 46(1), e1-e14.

**Article 16** - Equality of Opportunity in Public Employment <sup>32</sup>

Article 16 guarantees equal opportunity in public employment for all citizens, including individuals with disabilities, and promotes job reservations in the public sector for them.

**Article 21** - Protection of Life and Personal Liberty

Article 21 ensures that no one can be deprived of life or personal liberty without legal procedures, which has been interpreted by the courts to encompass the right to live with dignity, especially for individuals with disabilities.

**Article 39A** - Equal Justice and Free Legal Aid

Article 39A mandates the state to provide free legal aid to ensure justice for all, particularly for disadvantaged groups, including people with disabilities.

**Article 41** - Right to Work, Education, and Public Assistance

Article 41 mandates the state to ensure the right to work, education, and public assistance for individuals unable to earn a livelihood due to disabilities.

**Article 46** - Promotion of Educational and Economic Interests of Scheduled Castes, Scheduled Tribes, and Other Weaker Sections.

Article 46 mandates special provisions to uplift weaker sections, including persons with disabilities, to promote their educational and economic interests.

**Article 81** (Representation of People with Disabilities)

Though not in the original Constitution, provisions for the representation of disabled persons were added over time to ensure their inclusion in the legislative process.

The Rights of Persons with Disabilities Act, of 2016, which replaced the Persons with Disabilities Act, of 1995, aligns with constitutional provisions to ensure full societal participation for individuals with physical disabilities. These laws aim to promote inclusion, equality, and dignity for people with disabilities in India.

## **GENDER JUSTICE:**

Gender justice means treating everyone—men, women, and people of all genders—fairly and ensuring equal rights and opportunities. It focuses on removing barriers that prevent people from reaching their full potential based on gender. Gender justice is the principle that all genders should be treated equally and fairly. This includes equal pay for equal work, meaning men and women should earn the same salary for the same job. It also supports the freedom to make choices without fear of discrimination, protection from violence, and equal access to education and job opportunities. Gender justice encompasses fairness for everyone, not just women's rights. Gender justice is crucial for a fair and balanced society. When everyone is treated equitably, it leads to a healthier and more prosperous community. Here are key reasons why gender justice matters:

### **Fairness and Equality**

Everyone deserves respect and dignity, and no one should face discrimination because of their gender.

### **Stronger Economy**

When men and women are provided with equal job opportunities, the economy experiences growth. Companies gain advantages from diverse teams with varying perspectives.

### **Better Education and Health**

When girls get the same education as boys, they can contribute to society in meaningful ways. Equal access to healthcare ensures a healthier population.

## **Reduction of Violence and Crime**

Gender justice helps prevent gender-based violence, such as domestic abuse and harassment. A society that respects all genders is safer for everyone.

## **CHALLENGES OF GENDER JUSTICE ;**

### **Gender Stereotypes**

Society often expects individuals to behave in specific ways. For example, women are often expected to manage household responsibilities, while men are typically expected to work outside the home.

### **Lack of Legal Protection**

Some countries lack strong laws to protect women's rights, and even when laws exist, they are not always properly enforced. Achieving gender justice requires effort from everyone governments, organizations, and individuals. Here are some ways to promote gender justice: Education for All Both boys and girls should have access to quality education. Schools should teach children that men and women are equal.

### **Supporting Women in Leadership**

More women should be encouraged to take leadership roles in politics, business, and education. Equal representation in decision-making leads to fair policies for all. Examples of Gender Justice in Action. Here are some real-life examples of gender justice making a difference.

### **Gender Justice and Men**

Gender justice is not just about women; it benefits men too. Freedom from Stereotypes Men are often expected to be strong and not show emotions. Gender justice allows them to express their feelings without judgment. Work-Life Balance – Men should be encouraged to take paternity leave and share household responsibilities. Safer Society – Gender equality reduces

violence and creates a safer environment for everyone.

## **ADULTERY:**

Adultery is a complex issue in the context of gender justice. The treatment of adultery in various societies often reflects broader gender norms and biases.

### **Gender Bias in Adultery Laws**

Historically, legal systems have treated adultery differently depending on gender. Women have often been punished more severely than men. In many patriarchal societies, women's adultery has been criminalized or heavily penalized, while men's infidelity has frequently been tolerated or overlooked. This double standard is evident in laws that have allowed men to divorce or punish their wives for adultery while facing fewer consequences for their own extramarital affairs.

### **Legal Reforms and Gender Equality**

Many modern legal systems have decriminalized adultery to promote gender justice. In 2018, India's Supreme Court struck down Section 497 of the Indian Penal Code, which criminalized adultery only for men and treated women as passive victims. Countries like France, Italy, and Germany have also abolished harsher penalties for female adultery. However, in some countries under Islamic law, strict penalties for adultery, including stoning or imprisonment, continue to disproportionately affect women.

### **Social and Cultural Impacts**

In some cultures, women who commit adultery may face honor killings or social ostracism, while men often face fewer consequences. Adultery laws have historically aimed to control women's sexuality and ensure paternity certainty.

### **Feminist Perspective**

Feminists argue that adultery laws often reinforce patriarchal control over women's bodies and relationships. They advocate for equal treatment of men and women in marriage and

relationship matters. This includes decriminalizing adultery to prevent state control over private issues. Additionally, they emphasize the need to recognize the emotional and financial consequences of infidelity in divorce and custody cases.

### **CONCLUSION :**

Gender justice aims to create a fair world where people of all genders have equal rights, opportunities, and protections. It benefits everyone, not just women. Achieving gender justice requires education, fair laws, equal pay, and a shift in societal views on gender roles. When treated with respect and fairness, society thrives. Adultery is an offense under the Indian Penal Code (IPC) but not under the BNS framework, where divorce serves as the remedy. In terms of gender justice, adultery should be a civil matter addressed within marriage laws rather than a criminal offense. True justice ensures equal rights and responsibilities for both men and women in relationships. Vulnerable groups are subsets of the population more likely to suffer due to unjust or flawed systems affecting social, political, cultural, economic, or environmental structures. Improving their conditions requires a mix of policy changes and community involvement.

### **SUGGESTION:**

Here are some key suggestions:

1. Ensure equitable access to high-quality education, including financial assistance for low-income families.
2. Develop specialized programs for underprivileged students and those with disabilities.
3. Increase access to affordable healthcare and establish medical centers in underserved areas.
4. Promote skill development and job training initiatives.
5. Enforce anti-discrimination laws in hiring practices and workplace diversity.
6. Introduce a guaranteed minimum or universal basic income.
6. Provide support and legal assistance to uphold the rights of vulnerable groups.
7. Support NGOs and community organizations that assist disadvantaged individuals.

8. Promote diversity education and encourage the political engagement of marginalized groups.
9. Advocate for gender equality and measures to prevent harassment and violence against women.
10. Improving conditions for society's most vulnerable requires a comprehensive approach focused on social justice and equality, combining short-term actions with long-term reforms.

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### 13. AN ANALYSIS OF COMMUNITY SERVICE AS A PUNISHMENT UNDER BHARATIYA NYAYA SANHITA

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#### **ABSTRACT**

*The Bharatiya Nyaya Sanhita (BNS) has introduced community service as a new way to punish people for small crimes. This is a move towards helping people who have done wrong to become better members of society. Community service is used for crimes like breaking rules as a public servant, not showing up in court, small thefts, behaving badly in public when drunk, and saying bad things about someone.*

*This paper looks at how community service works under BNS, what it aims to do, and the challenges in making it happen. It also sees how this new approach compares to what other countries do and how it can help make society safer and more united.*

**KEYWORDS:** *Restorative Justice, Rehabilitation, Community Service, Punishment Reform, Criminal Justice.*

#### **INTRODUCTION**

The Bharatiya Nyaya Sanhita (BNS), enacted in 2023, replaces the Indian Penal Code (IPC), marking a significant transformation in India's criminal justice system. Among its many innovations is the introduction of community service as an alternative punishment for minor crimes. This reform aligns with global trends in restorative justice, emphasizing rehabilitation over retribution. Crimes eligible for community service include petty theft, public nuisance under intoxication, failure to appear in court, and defamation through false complaints<sup>1</sup>.

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<sup>1</sup> Bharatiya Nyaya Sanhita provisions on alternative punishments

## HISTORICAL EVOLUTION OF PUNITIVE MEASURES IN INDIA

India's criminal justice system has historically leaned toward punitive measures such as imprisonment and fines. The IPC, introduced during British rule, focused on deterrence rather than rehabilitation. However, societal changes and advancements in criminological theories have necessitated reforms emphasizing restorative justice. The BNS represents a paradigm shift by incorporating community service as a penalty for select offenses<sup>2</sup>.

## KEY PROVISIONS OF COMMUNITY SERVICE UNDER BNS

Community service is detailed under six specific crimes in the BNS. For instance:

- **PETTY THEFT:** If the stolen property is valued below ₹5,000 and returned or restored, the offender may be sentenced to community service instead of imprisonment.
- **PUBLIC NUISANCE:** Creating disturbances while intoxicated can result in either a fine or community service.
- **DEFAMATION THROUGH FALSE COMPLAINTS:** Filing fake defamation cases can attract penalties including community service.

These provisions aim to balance accountability with opportunities for rehabilitation.

## OBJECTIVES OF COMMUNITY SERVICE

1. **REHABILITATION:** Encouraging offenders to contribute positively to society.
2. **RESTORATIVE JUSTICE:** Repairing harm caused by the offense.
3. **DECONGESTION OF PRISONS:** Reducing the burden on India's overcrowded prisons.
4. **COST EFFICIENCY:** Minimizing state expenditure on incarceration.
5. **SOCIAL INTEGRATION:** Preventing stigmatization of offenders by allowing them to reintegrate into society through constructive actions.

## COMPARATIVE ANALYSIS: GLOBAL PRACTICES

Several countries have successfully implemented community service as part of their criminal

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<sup>2</sup> Procedural reforms under BNSS

justice systems:

**UNITED KINGDOM:** Community service orders are used for minor offenses, focusing on offender rehabilitation.

**UNITED STATES:** Programs like probation often include mandatory community service.

**AUSTRALIA:** Community-based sentencing options emphasize restorative justice. India's adoption of similar measures under BNS reflects an effort to align with global best practices while addressing local challenges.<sup>3</sup>

### CHALLENGES IN IMPLEMENTATION

Despite its potential benefits, implementing community service under BNS faces several hurdles:

1. **MONITORING MECHANISMS:** Ensuring compliance with community service orders requires robust systems. Comparative practices in restorative justice.
2. **JUDICIAL DISCRETION:** Uniformity in sentencing remains a concern due to varying interpretations by courts.
3. **PUBLIC PERCEPTION:** Community service may be perceived as lenient, undermining its deterrent effect.
4. **ADMINISTRATIVE CAPACITY:** Local authorities must be equipped to manage and supervise offenders effectively.<sup>3</sup>

### CASE LAW ANALYSIS

The first case under BNS involved a street vendor charged under Section 285 for obstructing public movement at a railway station in Delhi<sup>4</sup>. While this case did not involve community service directly, it highlights the transition from IPC to BNS and sets a precedent for future cases involving alternative punishments.

### CONSTITUTIONAL AND HUMAN RIGHTS PERSPECTIVES

Community service aligns with constitutional principles such as Article 21 (Right to Life) by promoting humane treatment of offenders. It also adheres to international human rights standards advocating non-custodial measures for minor crimes.

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<sup>3</sup> Challenges in monitoring community service

<sup>4</sup> First case registered under BNS

## **PROCEDURAL REFORMS UNDER BNS**

The Bharatiya Nagarik Suraksha Sanhita (BNSS), replacing CrPC, elaborates on procedural aspects related to community service:

- Online registration of complaints.
- Mandatory videography of crime scenes.
- Electronic summons delivery.

These reforms aim to streamline judicial processes while ensuring transparency and accountability.

## **IMPACT ON LAW ENFORCEMENT AND JUDICIARY**

Community service requires collaboration between law enforcement agencies, judiciary, and local administrative bodies. Training programs for police officers and judicial personnel are essential for effective implementation.

## **GENDER JUSTICE AND PROTECTION OF VULNERABLE SECTIONS**

Community service provisions are designed to protect vulnerable sections by addressing minor offenses without resorting to imprisonment or stigmatization. This approach is particularly significant for women and marginalized communities who may face disproportionate consequences under traditional punitive systems.

## **WAY FORWARD: RECOMMENDATIONS**

**CAPACITY BUILDING:** Establishing dedicated units within local administrations to manage community service programs

**PUBLIC AWARENESS CAMPAIGNS:** Educating citizens about the benefits and rationale behind community service.

**JUDICIAL GUIDELINES:** Issuing standardized guidelines for courts to ensure consistency in sentencing.

**MONITORING FRAMEWORKS:** Developing technology-driven solutions for tracking

compliance with community service orders.

## CONCLUSION

The introduction of community service under Bharatiya Nyaya Sanhita represents a progressive step toward modernizing India's criminal justice system. By focusing on rehabilitation and restorative justice, this reform has the potential to transform societal attitudes toward crime and punishment while reducing reliance on incarceration.

However, its success hinges on effective implementation, public acceptance, and sustained efforts by all stakeholders involved in the criminal justice process.

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## 14. LEGAL ASPECTS OF BHARATIYA NYAYA SANHITA AND ITS IMPACTS ON INDIAN CRIMINAL JUSTICE SYSTEM: ECONOMIC CRIMES, CYBER-CRIMES AND EMERGING CRIMINAL OFFENSES.

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### ABSTRACT

*The Bharatiya Nyaya Sanhita (BNS) of 2023, enacted to replace the Indian penal code (IPC) of 1860, marks a significant reform in India's criminal justice system. It introduces modern legal provisions to address contemporary challenges, including the rise of cybercrimes, economic offenses, and emerging criminal activities. With the rapid evolution of technology, traditional legal frameworks require updates to effectively combat crimes. BNS aims to bridge this gap by incorporating new provisions to tackle financial frauds, AI-driven frauds, terror-financing, bio-war, and so on.*

*Economic crimes have evolved due to digital transactions, leading to a rise in money laundering, corporate fraud, Ponzi-schemes, and tax evasion. BNS strengthens legal measures against these offenses by enhancing punitive provisions, ensuring stricter compliance, and promoting financial transparency. The laws expand the scope of criminal breach of trust, forgery, and counterfeiting to cover modern economic offenses. It causes financial losses for individuals and damage the national economy.*

*Cybercrimes, once considered secondary offenses, have now become primary threats. BNS introduces stricter regulations for hacking, online defamation, data breaches, and financial cybercrimes, recognizing their growing impact on individuals and national security.*

*Provisions against deepfake technology, AI-driven fraud, and, cyberstalking reflect the need to safeguard digital identities and privacy in the world.*

*Furthermore, emerging criminal offenses such as organized crime, narco-terrorism, human trafficking, organ trading, environmental offenses, genetic crimes, cryptojacking, space crimes are addressed under the act. This aims to combat these crimes through stricter sentencing guidelines, surveillance mechanisms, international cooperation.*

*This study focuses on the legal implications of BNS, its effectiveness in combating evolving crimes, and its potential impact on India's criminal justice system.*

**Key words:** *economic crimes – cyber stalking – emerging criminal offences – surveillance mechanism.*

## **INTRODUCTION:**

“Bharatiya Nyaya Sanhita: Reforming Laws, Reshaping Justice, Reinforcing trust!” The evolution of crime in the digital era has necessitated a transformative approach to criminal law. The Bharatiya Nyaya Sanhita (BNS) of 2023, replacing the colonial-era Indian Penal Code (IPC) of 1860, marks a shift in India's criminal justice system. With the rapid advancements in technology and financial systems, traditional legal frameworks have struggled to address the issues. So, BNS introduces stringent laws to combat the rising threats of cybercrimes, economic crime and emerging criminal offences. By incorporating modern legal provisions, stricter compliance mechanisms and enhanced punitive measures, BNS aims to bring the national security, protect digital identities, and promote financial transparency. This study focuses on the legal significance of BNS and its role in addressing evolving crimes and its overall impact on India's criminal justice system.

## **1. ECONOMIC CRIMES AND BHARATIYA NYAYA SANHITA:**

### **1.1. UNDERSTANDING THE BASICS OF ECONOMIC CRIMES:**

An economic crime is also known as financial crimes or organized crimes or white-collar crimes, refers to illegal activities committed by an individual or group of individuals in order to have a financial gain. The economic offences include the following:

- Forgery – Illegal altering a genuine financial asset to gain an unfair gain.
- Counterfeiting – Illegally creating or printing fake currency.
- Hawala transactions – it is an informal and traditional method of transferring money without physical movement.
- Schemes to defraud banks or financial institutions – loan scams, credit card fraud,

phishing, money laundering and so on.

- Ponzi schemes – it is an investment fraud that pays existing investors with funds collected from new investors.
- Large scale organized betting – it creates a false profit illusion before the fraudster steals the funds by deceiving people with high returns of investments.
- Criminal breach of trust – Cheating and dishonestly inducing delivery of property.
- Tax evasion - Tax evasion is the illegal act of deliberately avoiding paying taxes by underreporting income, inflating deductions, or hiding money.

## **1.2. PROVISIONS RELATING TO ECONOMIC CRIMES IN BNS:**

The Bharatiya Nyaya Sanhita, 2023 (BNS) replaces the Indian Penal Code, 1860 (IPC) includes the key provisions relating to economic crimes.

Under Indian Penal Code, 1860 and Bharatiya Nyaya Sanhita, 2023:

### **(i) FORGERY:**

Section 463 of Indian Penal Code, 1860 (IPC) states that whoever makes or alters a false document or electronic record with the intent to cause harm, support a false claim, deceive someone into giving up property, make someone enter a contract, or commit fraud, is said to commit forgery.

Section 465 of Indian Penal Code, 1860 (IPC) states that whoever commits forgery shall punished with imprisonment of either description for a term which may extend to two years, or with fine or with both.

Section 336(1) and 336(2) of Bharatiya Nyaya Sanhita, 2023 (BNS) deals with forgery and punishment for forgery which replaces Section 463 and Section 465 of Indian Penal Code, 1860 respectively into sub-sections.

### **Illustration:**

A, signs a cheque in the name of B without B's consent and attempts to cash it. This constitutes forgery because A fraudulently created a document with the intent to deceive.

### **(ii) COUNTERFEITING:**

Section 489A of Indian Penal Code, 1860 states that whoever counterfeits, or knowingly performs any part of the process of counterfeiting, any currency-note or bank-note, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. Section 178 of Bharatiya Nyaya Sanhita, 2023 replaces 489A of the Indian Penal Code, 1860.

**Illustration:**

Giri, a criminal prints fake money and uses it for purchases, deceiving businesses and harming the economy.

**(iii) CRIMINAL BREACH OF TRUST:**

Section 405 of Indian Penal Code, 1860 states that whoever is entrusted with property or has control over it and dishonestly misappropriates, uses, or disposes of it in violation of legal directions or a contract, or allows someone else to do so, commits criminal breach of trust (now replaced by Section 316(1) of Bharatiya Nyaya Sanhita, 2023).

Section 406 of Indian Penal Code, 1860 states that whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both. Section 406 of Indian Penal Code, 1860 is replaced with Section 316(2) of Bharatiya Nyaya Sanhita, 2023 which states the upper limit of the imprisonment is increased from three years to five years.

**Illustration:**

“A”, a bank employee secretly transfers customers funds into his own account instead of processing their transactions, betraying their trust and committing financial fraud.

**(iv) CHEATING:**

Section 415 of Indian Penal Code, 1860 states that whoever deceives someone and fraudulently or dishonestly induces them to give up property, allow someone to retain property, or do (or not do) something they otherwise wouldn't, causing harm to their body, mind, reputation, or property, commits cheating (now replaced by Section 318(1) of Bharatiya Nyaya Sanhita, 2023).

Section 417 of Indian Penal Code, 1860 states that whoever cheat shall be punished with

imprisonment of either description for a term which may extend to one year, or with fine or with both. Section 417 of Indian Penal Code, 1860 is replaced with Section 318(2) of Bharatiya Nyaya Sanhita, 2023 which states the upper limit of the imprisonment is increased from one year to three years.

**Illustration:**

A, by pledging as diamond articles which he knows are not diamonds, intentionally deceive Z, and thereby dishonestly induces Z to lend him money, A cheats.

Offences	Indian Penal Code, 1860 (IPC)	Bharatiya Nyaya Sanhita, 2023 (BNS)
Forgery	Section 463	Section 336(1)
Punishment for forgery	Section 465	Section 336(2)
Counterfeiting	Section 489A	Section 178
Criminal breach of trust	Section 405	Section 316(1)
Punishment for criminal breach of trust	Section 406	Section 316(2)
Cheating	Section 415	Section 318(1)
Punishment for cheating	Section 417	Section 318(2)

**(v) HAWALA TRANSACTION:**

Hawala transaction is an informal method of transferring money without physical movement. It operates outside traditional banking system and relies trust between hawala brokers.

It involves the process of initiation, communication and settlement. In initiation, a person [sender] in one country gives money to a hawaladar with instruction to transfer it to a recipient in another country. In communication, the hawaladar contacts another hawaladar in the recipient's location, instructing them to pay the recipient. In settlement, instead of physically transferring money, hawaladar settle debts through various means, including trade, cash or other informal compensations.

The key features of hawala transaction are it has no official records (the transactions are not

officially recorded, making it difficult to track), trust-based system (hawaladars rely on mutual trust and networks rather than legal contacts) and faster and cheaper (not like formal banking).

Indian laws: Under the Foreign Exchange Regulation Act, 1999 (FERA)<sup>1</sup> and Prevention of Money Laundering Act, 2002 (PMLA) deals with unauthorised hawala transactions are illegal in India.

International regulations: the Financial Action Task Force (FATF)<sup>2</sup> monitors hawala networks to prevent illicit financial activities.

### **Case laws: Jain Hawala Diary Case<sup>3</sup>:**

It is one of the biggest scams in the history of India, nearly 115 top politicians, businessmen, film industry, people and bureaucrats of Kashmir were involved in this scandal. It is for the funding of terrorist money which was sent to Hizbul Mujahideen, an organization of Kashmiri militants. The money involvement was about 18 million US dollars (i.e. Rs. 650 million).

### **(vi) PONZI SCHEME:**

Ponzi scheme is a fraudulent investment scam where returns to earlier investors are paid using the capital of new investors instead of legitimate profits. The scheme collapses when new investments dry up, leaving most investors with losses.

It involves the process of attracting investors (the fraudster promises high returns with a little or no risk), initial payouts (early investors receives returns, often reinvesting due to apparent success), growth through new investors (the scheme expands as new money is used to pay

<sup>1</sup> Section 8 & 9 of FERA provides detailed legal prohibitions on hawala market. Especially, Section 9(1)(f) provides specific prohibition on hawala. <<https://www.rashminsanghvi.com/articles/foreign-exchange-law/archives/fema-1999/taxmans-guide-to-foreign-exchange-management-act-1999-hawala-transactions.html#:~:text=5.1%20Under%20FERA%2C%20sections%208,provided%20specific%20prohibition%20on%20hawala>> visited on 10.03.2025.

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old investors) and inevitable collapse (when new investment slow, the scheme runs out of money and collapses). In India, The Price Chits and Money Circulation Schemes (Banning) Act, 1978<sup>4</sup> prohibits Ponzi schemes and Securities Exchange Board of India (SEBI) which regulates and takes action against such scams.

**Examples:**

Saradha Scam (2013): A multi-crore chit fund scam in West Bengal that defrauded lakhs of investors.

PACL (Pearl Agro. Corporation Limited) Scam: Collected Rs 49,100 crore from investors under the guise of land investments.

**(vii) TAX EVASION:**

Tax evasion means where individuals or businesses illegally avoid paying taxes, leading to loss of government revenue, black money circulation, and financial instability.

It impacts on revenue loss (reduces government fund for public welfare), black money and corruption (encourages illegal financial activities), unfair business practices (create an uneven playing field) and economic instability (weakens investor confidence and growth).

In India, Income Tax Act, 1961, Prevention of Money Laundering Act, 2002, Black Money (undisclosed foreign income and assets) and Imposition of Tax Act, 2015 deals this issue.

**1.3 IMPACTS AND CHALLENGES OF BHARATIYA NYAYA SANHITA, 2023 ON ECONOMIC CRIMES:**

**IMPACTS:**

- Stronger Punishments & Expanded Scope: The BNS broadens the definition of economic crimes like cheating, fraud, and corruption. Stricter punishments aim to deter white-collar crimes.
- Enhanced Focus on Organized Financial Crimes: It covers emerging threats like cyber

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<sup>4</sup>Ponzi Scheme: What It Is, Examples and Origins: <<https://www.bajajbroking.in/blog/ponzi-scheme-meaning#:~:text=These%20schemes%20are%20strictly%20prohibited,of%202019%20bans%20Ponzi%20Scheme>> visited on 10.03.2025

fraud, cryptocurrency scams, and corporate fraud more comprehensively.

- Clarity on White-Collar Crimes: BNS expands definitions of offenses like cheating and criminal breach of trust, making enforcement stronger against financial fraudsters.
- Digital financial crimes, such as online scams, hacking of financial data, and electronic frauds, are addressed with clearer legal provisions. Cyber-financial offenses are explicitly mentioned to align with modern technology-based crimes.

### **CHALLENGES:**

- Interpretational Issues: Some new definitions may lead to judicial ambiguity, delaying case resolution.
- Implementation Hurdles: Law enforcement needs training to effectively handle digital and corporate crimes.
- Challenge in Cross-Border Financial Crimes: Economic crimes often involve multiple countries. The BNS must align with international financial crime laws for better enforcement.
- Lack of Specialized Economic Crime Investigation Units: While BNS tightens legal provisions, its effectiveness depends on whether specialized financial crime units exist within police forces.
- Overlap with Other Laws: Economic offenses are also covered under PMLA (Prevention of Money Laundering Act), Companies Act, and IT Act. Coordination among these laws may cause jurisdictional confusion.

## **2. CYBER-CRIMES AND BHARATIYA NYAYA SANHITA:**

### **2.1. UNDERSTANDING THE BASICS OF CYBER-CRIME:**

Cyber-crime is an illegal activity involving computers, the internet or network devices. It commits identity theft, phishing scams, spread malware and instigate other digital attacks. The cyber-crime includes the following:

- Crimes against individuals
- Crimes against property
- Crimes against government and society
- Crimes related to AI and emerging technologies.

Crimes against individuals:	Crimes against property:	Crimes against government and society:	Crimes related to AI and emerging technologies:
<ul style="list-style-type: none"> <li>• Cyberstalking</li> <li>• Online harassment and bullying,</li> <li>• Identity theft</li> </ul>	<ul style="list-style-type: none"> <li>• Cyber fraud and scams</li> <li>• Ransomware attacks</li> <li>• Online</li> </ul>	<ul style="list-style-type: none"> <li>• Cyber terrorism</li> <li>• Data Breaches</li> <li>• Cyber Warfare</li> <li>• Fake news and</li> </ul>	<ul style="list-style-type: none"> <li>• Deepfake</li> <li>• Scams AI-based phishing attacks</li> <li>• Biometric Data</li> </ul>
<ul style="list-style-type: none"> <li>• Phishing</li> <li>• Hacking</li> <li>• Revenge Porn</li> <li>• Cyber defamation</li> </ul>	<ul style="list-style-type: none"> <li>banking and credit card fraud</li> <li>• Intellectual property theft</li> <li>• Cryptojacking</li> </ul>	<ul style="list-style-type: none"> <li>misinformation</li> <li>• Child Pornography</li> <li>And Exploitation</li> <li>• Dark web Crimes</li> </ul>	<ul style="list-style-type: none"> <li>Theft</li> </ul>

### 3.1. PROVISIONS RELATING TO CYBER-CRIME IN BNS:

#### Section 77 of BNS:

It deals with capturing or publishing pictures of private parts or acts of a woman without consent, constituting "voyeurism." Section 354 C of Indian Penal Code is replaced with Section 77 of Bharatiya Nyaya Sanhita with no changes.

#### Section 78 of BNS:

Section 354D(1)(ii) of Indian Penal Code, 1860 defines cyberstalking as monitoring the use by a woman of the internet, email and any other form of electronic communication. Section

354D (2) of Indian Penal Code, 1860 states that whoever commits the offence of stalking shall be punished on first conviction with imprisonment of either description for a term which may extend to three years and shall also be liable to fine and be punished on a second or subsequent conviction, with imprisonment of either description for a term which may extend to five years and shall also be liable to fine.

This provision has no changes in Bharatiya Nyaya Sanhita, 2023. The only change made is Section 354A to 354D of Indian Penal Code, 1860 is replaced with Section 78 of Bharatiya Nyaya Sanhita, 2023.

#### **Section 294 of BNS:**

Section 292 of Indian Penal Code is replaced with Section 294 of Bharatiya Nyaya Sanhita with changes in its punishment. It deals with the publication and transmission of obscene material, including electronically. The punishment for this offence on first conviction the fine is increased from Rs. 2000 to Rs. 5000 and from Rs. 5000 to Rs. 10000 on subsequent conviction. The new act added the provision of displaying any content in electronic form and also added in whatever manner.

#### **Section 356(1) of BNS:**

Section 499 of Indian Penal Code is replaced with Section 356(1) of Bharatiya Nyaya Sanhita. It penalizes defamation, including sending defamatory content through email. Imposes imprisonment and fines. Section 500 of Indian Penal Code deals with the punishment for defamation which is replaced with Section 356(2) of Bharatiya Nyaya Sanhita. A person convicted is punished with two years of imprisonment or fine or both. The new act added the community service as alternative punishment.

#### **4.1. PROVISIONS RELATING TO CYBER-CRIMES IN IT ACT:**

Data theft in India are regulated by the Information Technology Act, 2000. Any unlawful act related to the disclosure of data in violation lawful contracts (Section 72A) and breaches confidentiality and privacy (Section 72) are subject to penalties. If a person engage in the unauthorized access of client's confidential information attracts severe liability under Section

72 of the Information Technology Act, 2000.<sup>5</sup>

Section 43 of the IT Act includes activities falling under data theft. It includes the individuals who without proper authorization, download, copy, or extract data, computer databases, or information from a computer system or internet. It also includes the data stored in removable storage media, are liable to compensate the affected party for damages.<sup>6</sup>

### 5.1. CASE LAWS:

#### **State of Tamil Nadu v. Suhas Katti (2004)<sup>7</sup>:**

This case is the first conviction for cyberstalking in India. Accused was found guilty of sending obscene messages to a woman through email and posting false information about her on a Yahoo group. The defendant was punished with two year's imprisonment and ₹500 fine under IT Act, 2000.

### 6.1. IMPACTS AND CHALLENGES OF BHARATIYA NYAYA SANITA, 2023 ON CYBER-CRIMES:

#### IMPACTS:

- BNS explicitly recognizes cybercrimes, which were not adequately covered under the IPC. It includes cyber fraud, identity theft, hacking, data breaches, and deepfake-related offenses.
- Stronger Punishments for Cyber Offenders: Stricter penalties for online fraud, cyberstalking, cyberbullying, and digital impersonation.
- Enhanced Protection Against Digital Fraud: Strengthens legal action against phishing, financial frauds, and cryptocurrency scams. Provides better safeguards for digital transactions and e-commerce users.
- Use of Digital Evidence: BNS promotes the use of digital and electronic evidence in courts, making cybercrime investigations more effective which helps law enforcement agencies legally access digital footprints to track the offenders.

<sup>5</sup>Information Technology Act, 2000 <<https://www.indiacode.nic.in/handle/123456789/1999>> visited on 12.03.2025[Section 72 and 72A]

<sup>6</sup> Information Technology Act, 2000 <<https://www.indiacode.nic.in/handle/123456789/1999>> visited on 12.03.2025 [Section 43]

<sup>7</sup> State of Tamil Nadu v. Suhas Katti (2004) [C. No. 4680 of 2004] < [https://lawbhoomi.com/state-of-tamil-nadu-vs-suhas-katti/#Case\\_Issues](https://lawbhoomi.com/state-of-tamil-nadu-vs-suhas-katti/#Case_Issues) > visited on 12.03.2025.

- It recognizes that cybercrimes have no territorial boundaries, allowing for wider jurisdiction in prosecuting offenders operating from different locations.

### **CHALLENGES:**

- **Need for Law Enforcement Training:** Police and investigative agencies need training in digital forensics and cyber investigation techniques is necessary.
- **Judicial Interpretation Issues:** Since cybercrimes evolve rapidly, courts may face challenges in interpreting digital evidence and applying new legal provisions. Lack of precedents may delay case resolution.
- **Cross-Border Legal Complexities:** Many cybercriminals operate from foreign jurisdictions, making enforcement difficult. Requires international cooperation and legal treaties for better enforcement.
- **Privacy Concerns:** Stricter cybercrime laws may lead to increased surveillance, raising concerns about privacy rights and data protection. A balance is needed to prevent misuse of cyber laws for censorship or political targeting.
- **Adaptation by Criminals:** Cybercriminals constantly develop new methods to bypass laws and security measures. The legal framework must be continuously updated to keep up with emerging threats like AI-driven fraud, deepfakes, and ransomware attacks.

### **3. EMERGING CRIMINAL OFFENCES:**

#### **3.1. UNDERSTANDING THE BASICS OF EMERGING CRIMINAL OFFENCES:**

In this modernized world there are many emerging offences such as organized crime, narco-terrorism, human trafficking, organ trading, environmental offences, genetic crimes, cryptojacking, space crimes and so on. Let's see about each offence in detail below with the provisions in BNS and IPC.

##### **(i) ORGANIZED CRIME:**

It is a systematic illegal activity which is carried out by a structured group like mafia, cartels, gangs in order to gain financial or material benefits through violence, extortion, smuggling,

human trafficking, or drug trade.

**Example:** Illegal arms trade and contract killings.

**Provision relating to organized crime in BNS and IPC:**

Section 111 of the Bharatiya Nyaya Sanhita defines organized crime as any continuing unlawful activity, including kidnapping, robbery, vehicle theft, extortion, land grabbing, contract killing, economic offenses, cyber-crimes, trafficking of persons, drugs, weapons, or illicit goods or services, human trafficking for prostitution or ransom, by any person or group acting in concert, either as members of an organized crime syndicate or on its behalf, using violence, threat of violence, intimidation, coercion, or other unlawful means to obtain material or financial benefits.

While the IPC does not explicitly define organized crime, various sections deal about it such as:

1. Section 120B: Punishment for criminal conspiracy.
2. Section 364A: Kidnapping for ransom.
3. Section 387: Putting a person in fear of death or grievous hurt to commit extortion.

**Special legislation for organized crime:**

India doesn't have any special legislation to address the organized crime. But state possess some special legislation to address it like the Maharashtra Control of Organized Crime Act, 1999 (MCOCA: **State of Maharashtra v. Bharat Shanti Lal Shah (2008)**<sup>8</sup>, the Supreme Court upheld the constitutional validity of it, emphasizing the need for stringent laws to combat organized crime) and other state laws, like the Gujarat Control of Terrorism and Organized Crime Act, 2015, address this, along with the Indian Penal Code (IPC) and other relevant laws.

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<sup>8</sup> State of Maharashtra v. Bharat Shanti Lal Shah (2008 AIR SCW 6431)  
 <<https://indiankanoon.org/doc/698472/>>

**(ii) NARCO-TERRORISM:**

It is the use of drug trafficking to finance terrorist activities, or the use of terrorism to protect drug cartels and their operations.

**Example:** A terrorist group smuggling narcotics to fund weapons purchases and attacks.

**IPC and BNS provision:**

Both IPC and BNS did not directly address the issue of narco-terrorism. Section 111 of the BNS includes trafficking in drugs as part of organized crime. The IPC does not specifically mention narco-terrorism.

**Special Legislation:** The Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985, addresses offenses related to drug trafficking in order to combat it.

**(iii) HUMAN TRAFFICKING AND ORGAN TRADING:**

The illegal trade of humans for forced labor, sexual exploitation, organ removal, or other exploitative purposes.

**Example:** Kidnapping women and children and forcing them into prostitution or bonded labor.

**BNS and IPC provisions:**

Section 143 of Bharatiya Nyaya Sanhita deals with the trafficking of a person which replaced the Section 370 and Section 370A of Indian Penal Code, 1860. The upper limit of imprisonment is increased from seven years to ten years, and for sub-section (2) from five years to seven years.

**(iv) ENVIRONMENTAL OFFENSES:**

Crimes that harm the environment, such as illegal deforestation, wildlife poaching, pollution, and dumping hazardous waste.

**Example:** A factory releasing toxic chemicals into a river, poisoning local water supplies.

### **BNS and IPC provisions:**

Section 280 of BNS deals with making atmosphere noxious to health which replaced the Section 278 of IPC. The upper limit of the fine is increased from five hundred to one thousand rupees.

**Special Legislation:** The Environment Protection Act, 1986, provides for the protection and improvement of the environment.

### **(v) GENETIC CRIMES:**

Illegal activities involving genetic manipulation, unauthorized genetic testing, bioweapons, or unethical use of genetic engineering.

**Example:** Cloning humans or modifying genes to create designer babies without legal approval.

**Special Legislation:** The Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994, prohibits sex selection and regulates genetic testing.

### **(vii) CRYPTOJACKING:**

A cyber-crime where hackers secretly use someone's computer or devices to mine cryptocurrency without their consent.

**Example:** A hacker infecting thousands of computers to generate Bitcoin, slowing down users' systems.

**Special Legislation:** The Information Technology Act, 2000, particularly Section 66, deals with computer-related offenses, which can encompass unauthorized access and data theft associated with cryptojacking.

**(vii) SPACE CRIMES:** Criminal activities related to outer space, including satellite hacking, space debris pollution, or unauthorized space weaponization.

**Example:** A hacker taking control of a country's communication satellite, disrupting signals.

## **IMPACTS AND CHALLENGES OF BHARATIYA NYAYA SANITA, 2023 ON EMERGING CRIMINAL OFFENCES:**

### **IMPACTS:**

- Stronger Cybercrime Provisions: BNS expands the definition of electronic and digital offenses, covering cyber fraud, identity theft, and AI-related crimes. Enhanced punishment for online harassment and deepfake crimes.
- Enhanced Provisions Against Terrorism & Organized Crime: BNS introduces new definitions for terrorism and strengthens punishments for financing terrorism and organized crimes.
- Community service: For certain offenses, BNS introduces community service, promoting rehabilitative justice instead of only punitive measures.

### **CHALLENGES:**

- Overlapping Laws: Some provisions in BNS overlap with IT Act and PMLA, leading to jurisdictional confusion. Clarity is needed on how AI-generated offenses will be prosecuted.
- Privacy Concerns: Stricter digital crime laws may lead to state overreach and privacy violations. A balance between national security and individual freedoms is necessary.
- Challenges in Cross-Border Crimes: Many emerging crimes, especially in cyberspace, are international in nature. BNS lacks clear provisions on global cooperation in cybercrime cases.
- Law enforcement needs specialized training to tackle new offenses like AI fraud, cryptocurrency crimes, and deepfake-related offenses. Implementation gaps may lead to misuse or ineffective enforcement.

### **CONCLUSION:**

Economic, cybercrimes and other offences are evolving with technology and globalization, making it crucial for legal frameworks like the Bharatiya Nyaya Sanhita, 2023 (BNS) to adapt. By strengthening punishments, addressing financial frauds, cyber threats, organized crimes, AI created offences and incorporating digital evidence, BNS enhances India's criminal justice system to ensure justice and security in the digital era. Stronger laws must be complemented by technological advancements and skilled enforcement agencies to counter the financial and cyber threats.

**"Stronger Laws, Safer Nation: Justice Against Cyber-crime, Economic Crimes and emerging crimes!"**

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## 15. CYBER FORTRESS INDIA: A 360- DEGREE ANALYSIS OF LEGAL ARCHITECTURE, GLOBAL ALIGNMENTS AND ENFORCEMENT OPTIMIZATIONS

**Author:** Abithaambigai. R1 Co-Author: Yoga Vishnu. C2 Abstract:

### **Abstract**

*The expeditious advancement of digital technology had led to an increased upsurge in cyber-crimes, necessitating the need for an intricate and effective legal framework to counteract these emerging threats. Cybercrime is rapidly increasing due to many factors like the increased reliance on internet and the digital technology, opening more opportunities for the cyber criminals to target the individuals, businesses with attacks like phishing, ransomware, data breaches, etc. This is further fueled by the sophistication of cybercriminal tactics and the ease of accessing tools on the dark web. The National Crime Records Bureau(NCRB) reports cybercrimes in India increased by 24.2% in 2022 creating severe psychological effects on the victims. The new penal law Bharatiya Nyaya Sanhita, incorporates novel provisions on digital crimes and cyber security. This paper explores into the provisions of BNS in addressing contemporary cyber threats, identify legal enforcement challenges, and proposes reformative measures to fortify India's cybersecurity framework. The research integrates comparative analysis with international legal frameworks such as the European Union's General Data Protection Regulation(GDPR), The United States' Computer Fraud and Abuse Act(CFAA), and the Budapest Convention of Cybercrime. This paper endeavors to scrutinize the adequacy of BNS in mitigating cybercrimes and the impediments associated therein. The paper underscores the importance for India to enhance its legal structure to address evolving cyber menace. With nascent digital crimes on the rise it is imperative to address deficiencies and thus safeguard its citizens from the burgeoning menace of digital crimes.*

**Keywords:** *Cyber- crimes, Bharatiya Nyaya Sanhita, Legal enforcement, Nascent crimes, International legal framework, psychological effects.*

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## **Introduction:**

“Information is the oxygen of modern age. It seeps through the walls topped by barbed wire, it wafts across the electrified borders.”

**- Ronald Reagan**

The digital revolution has transformed the global landscape, bringing with it unprecedented opportunities and challenges. While the internet and digital technologies have facilitated communication, commerce, and innovation, they have also created new avenues for criminal activities. Digital crimes, also known as cyber-crimes, encompass a wide range of illegal activities conducted through digital means, including hacking, identity theft, online fraud, cyber terrorism, and the distribution of malicious software. The vulnerability of a common man to cyber-crime is directly proportional to his/her reliance on internet for sustaining in modern lifestyle. As the prevalence of digital crimes continues to rise, governments around the world have been compelled to enact legislation to address these threats and protect their citizens.

The Indian legal apparatus has undergone considerable metamorphosis, culminating in the enactment of Bharatiya Nyaya Sanhita. The Bharatiya Nyaya Sanhita (BNS) represents a significant step forward in the legal framework for combating digital crimes and ensuring cyber security. The BNS aims to provide a comprehensive legal framework that addresses the various forms of digital crimes and establishes mechanisms for their prevention, detection, and prosecution. However, the effectiveness of the BNS in achieving these objectives remains a subject of debate. This research paper seeks to critically evaluate the adequacy of the BNS in addressing digital crimes, comparing it with international laws, identifying lacunae in Indian law and the challenges it faces in ensuring robust cyber security.

## **Cyber-crimes:**

Today, technology is the foundation of modernization and as such, the increase in crime using technology is an inevitable reality. Cyber- crimes or otherwise known as digital crimes refers to criminal activities carried out using internet and the evolving digital technology. It

includes hacking, data theft, malware attacks, and financial fraud. With businesses, governments and individuals becoming heavily reliant on the digital platforms, the inherent cyber menace has escalated, leading to billions in financial losses worldwide. In 2023 alone, cybercrime caused over \$8 trillion in damages, impacting online security on a massive scale. From phishing scams to ransomware attacks, cybercriminals exploit vulnerabilities to steal sensitive information and disrupt systems. Digital lawbreakers utilize an assortment of techniques to dispatch a digital assault, including malware, phishing, ransom ware, refusal of administration, among other methods. The world is currently confronting what is by all accounts a fifth era digital assault – a refined, multi-vector assault with clear attributes of the digital pandemic. “Cyber-attacks have become a powerful, low-cost option of warfare. The world is facing forces armed with computer technology capable of hacking their way in and creates virtual damage that materially hurts others with the click of a button”.<sup>3</sup> As these assaults keep on developing both in recurrence and power, their effect on business has developed dramatically.

The National Crime Records Bureau (NCRB) compiles and publishes the statistical data on crimes in its publication “Crime in India”. According to the report ‘Crime in India’, 65,893 cases were registered under cybercrime, showing an increase of 24.4 per cent compared to 52,974 cases in 2021. “Crime rate (per lakh population) under this category has increased from 3.9 in 2021 to 4.8 in 2022. During 2022, 64.8 per cent of cybercrime cases registered were for the motive of fraud – 42,710 out of 65,893 cases – followed by extortion with 5.5 per cent – 3,648 cases – and sexual exploitation with 5.2 per cent – 3,434 cases,”<sup>4</sup>.

### **Evolution of cyber crimes**

Human civilization came a long way from abacus to modern high-speed computers. This transition is one of the crucial developments witnessed by humanity because it has changed the ways of living and except select few remotely located people, it has affected everybody’s life. Although this transition took its time and it was long enough to make evolution in cyber-

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<sup>3</sup> Mahmoud, K. (2013). (Rep.). Arab Center for Research & Policy Studies. Retrieved August 18, 2021, from <http://www.jstor.org/stable/resrep12651>

<sup>4</sup> <https://pib.gov.in/PressReleaseframePage.aspx?PRID=2003505>

crimes quite visible. Cybercrime has evolved from simple exploits in the early days of computing to highly sophisticated, organized, and global operations. Its origins are rooted in the curiosity and experimentation of early hackers, but it has since become a multi-billion-dollar industry. As technology continues to advance, the battle between cybercriminals and cybersecurity professionals will remain a constant challenge. In past few decades, there has been a continuous upsurge in recorded number cyber-crimes across the world. The more people are connected to the e-world networking, the more are chances of victimization from malwares, viruses and phishing. There has been very little work done at the international level to ascertain the country trends of cyber-crimes.

In order to define cyber-crimes elaborately, Santanam et. al. (2011) extended the classification of cyber-crimes beyond tool and target by further classifying cyber-crimes into person, property and victimless crimes. In terms of cyber-crimes, wherein computer is used as a tool, a victim is targeted to inflict psychological pain/discomfort. The modus operandi is usually subtle and ambiguous. In cases of cyber-crime where computer is used as tool, it is hard to apprehend the offender because usually the act is done from remote location or at times it may be a case of cross-border/international origins. The factor of anonymity from offender side and high vulnerability from victim side increases the propensity of cyber-crimes where computer is used as tool.

The first instance of development in cyber-crime came in the late 1980s which started with expeditious increase in the use of E-mails. A host of scams took the world by storm when an e-mail spread across the world in people's homes. In the late 1980s, a cyber form named "Morris Worm" attacked nearly 6000 of the 60,000 computers that were connected to the internet within 24 hours. The cyber worm caused a slowdown in the computers. The cyber worm infiltrated the computer systems at many colleges and universities. Later on, in the 1990s with the introduction of web browsers, the cyber criminals found new ways to infiltrate computer systems by fraudulent means. The cyber criminals would release viruses on the internet. The virus would infect a website which when opened by the user would infiltrate the user's computer. Another way to infect a user's computer was by displaying pop-up advertisements on the user's website. On clicking the advert, the user's computer would be infiltrated by the virus.

Moving on the next stage of evolution of digital technology, in the early 2000s, the internet presented the new age of social media and online entertainment. It was during this time frame that the cyber menace took an unprecedented growth and evolution. The introduction of social media led to people posting and sharing their personal information online. The flurry of personal information of users caused criminals to commit identity theft. This information was used to commit many other frauds such as banking frauds, credit card and financial frauds. The first decade of the 2000s saw plenty of different types of cyber-crimes such as Denial of Service (DDoS) attacks on popular websites, SQL Slammer worm infecting the SQL servers, several malware attacks, among others.

Our Indian law has not characterized the term digital wrongdoing in that capacity; nonetheless, a demonstration has been acquainted all together with tackle with these kinds of violations, which we know as the Data Innovation Act 2000 or the IT Act 2000. The term digital wrongdoing is an extremely wide term and, in this manner, can't be characterized in only one to two sentences.

## **Indian Position**

### **Laws relating to Cyber-crimes**

#### **Key Provisions on Cybercrime in the Bharatiya Nyaya Sanhita**

##### **Cyber Theft**

**Section 303<sup>5</sup>** introduces explicit legal recognition for theft involving mobile phones, data, or computer hardware/software. This provision broadens the concept of theft to include intangible digital assets, enhancing legal protections against data breaches, unauthorized access, and hardware theft.

**Section 317<sup>6</sup>** criminalizes the receipt of stolen property, including digital devices and data. This addition is crucial in combating black markets for stolen data, including personally identifiable information (PII) and proprietary software.

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<sup>5</sup> Section 303 of Bharatiya Nyaya Sanhita

## **Cyber Fraud**

**Section 318** addresses a range of cyber fraud activities such as:

1. Theft of passwords,
2. Creation of fraudulent websites, and
3. Online financial scams.

Penalties are tiered based on the severity of the offense, ensuring proportional punishment for varying degrees of digital fraud. This provision aligns India's legal framework with global best practices in deterring financial cybercrimes.

## **Hate Speech and Misinformation**

**Sections 196 and 197** expand hate speech regulations to include offenses committed via electronic communication. This broadens the scope of criminal liability to cover social media platforms and instant messaging applications, addressing modern threats like digital radicalization and online harassment.

Section 353 criminalizes the dissemination of false information likely to disrupt public order, including misinformation campaigns, fake news, and manipulated media designed to incite unrest.

## **Cyberstalking**

**Sections 71 and 72** incorporate provisions for cyberstalking, reflecting the evolving nature of harassment in digital spaces. While retaining the core language from the Indian Penal Code (IPC), these sections adapt existing legal standards to address online harassment, requiring judicial interpretation to clarify the scope of liability in digital contexts.

## **Organized Cybercrime**

**Section 111**<sup>1</sup> expands the definition of organized crime to include cyber-related offenses. This provision targets coordinated cybercriminal activities, such as hacking syndicates,

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<sup>1</sup> Section 111 of Bharatiya Nyaya Sanhita  
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phishing networks, and ransomware groups. By including cybercrime within organized crime statutes, the BNS enhances law enforcement's capacity to dismantle sophisticated digital crime syndicates.

### **Forgery and Use of Forged Documents**

**Section 336**<sup>2</sup> criminalizes forgery intended to harm an individual's reputation, extending the offense to electronic records. This ensures accountability for defamatory content, identity theft, and manipulated media such as deep fakes.

**Section 337**<sup>3</sup> penalizes the possession of forged documents or electronic records with fraudulent intent, strengthening protections against digital document fraud.

**Defamation and Public Mischief**

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<sup>2</sup> Section 336 of Bharatiya Nyaya Sanhita

<sup>3</sup> Section 337 of Bharatiya Nyaya Sanhita

**Section 356**<sup>10</sup> addresses defamation conducted via email or other electronic means. This provision aligns with global standards on online reputation management and aims to curb the misuse of digital platforms for character assassination.

**Section 353** also penalizes statements or rumors designed to incite public mischief, covering misinformation campaigns that could compromise national security, economic stability, or public order.

### **Key Changes and Modernization in the BNS**

The BNS reflects a conscious effort to modernize India's legal framework in response to evolving cyber threats. Notable advancements include:

#### **Enhanced Digital Evidence Framework:**

The BNS elevates electronic records to the status of primary evidence, reducing the procedural complexities previously associated with digital evidence. This aligns Indian law with international standards such as the United Nations Convention against Transnational Organized Crime (UNTOC) and the Budapest Convention on Cybercrime.

#### **Proactive Approach to Cybercrime:**

By codifying distinct cyber offenses, the BNS moves away from relying solely on broad interpretations under traditional theft or fraud laws. This creates clearer guidelines for investigating agencies and enhances victim protection.

#### **Expanded Jurisdiction for Cross-Border Cybercrime:**

The inclusion of digital platforms as mediums for criminal conduct enhances India's ability to prosecute individuals operating from foreign jurisdictions.

#### **International Legal Frameworks on Protection against cyber-crimes: A comparative analysis:**

As digital transformation accelerates globally, Cybercrime has become a significant global concern, prompting nations to adopt international legal frameworks to combat threats that transcend national boundaries. Various treaties, conventions and cooperative mechanisms have emerged to establish a harmonized legal approach for investigating, prosecuting and preventing cybercrimes. Below, are some international legal framework that address cybercrime:

### **The Budapest convention on Cybercrime (2001)**

The Budapest Convention on Cybercrime, also known as the Council of Europe Convention on Cybercrime, is the first international treaty designed to address internet and computer-related crimes. It was adopted by the Council of Europe in November 2001 and came into force in July 2004. While initiated by European countries, it is open to non-member states, making it a globally influential framework for combating cybercrime. The Convention aims to:

1. Harmonize national laws on Cybercrime.
2. Improve investigation techniques for digital crimes.
3. Foster international cooperation for effective cross-border investigation and prosecution.

### **Key Provisions:**

The Convention outlines four primary areas of focus:

#### **Substantive Criminal Law**

The treaty requires member states to criminalize the following activities:

1. Illegal access
2. Data interference
3. System interference
4. Misuse of devices
5. Computer-related forgery and fraud.
6. Child pornography and online sexual exploitation.
7. Copyright infringement in the digital space.

#### **Procedural Law**

The Convention provides legal tools for law enforcement to investigate cybercrimes, including:

1. Expedited data preservation.
2. Search and seizure of computer systems.
3. Real-time collection of traffic data.
4. Interception of content data for serious offenses.

### **Jurisdiction and International Cooperation**

Member states are required to establish jurisdiction over cybercrimes committed within their territory. The Convention facilitates international cooperation by requiring prompt information exchange, mutual legal assistance, and coordinated action in cybercrime investigations.

### **Safeguards and Protection of Rights**

The treaty emphasizes respecting human rights and privacy laws while investigating and prosecuting cybercrimes.

### **The United Nations Convention against Cybercrime**

The United Nations Convention against Cybercrime was adopted by the General Assembly of the United Nations on 24 December 2024 in New York by resolution 79/243. As far as the status of the Convention is concerned, the Convention will be open for signature at a signing ceremony to be held in Hanoi, Viet Nam, in 2025 and thereafter at United Nations Headquarters in New York until 31 December 2026. The Convention is the first comprehensive global treaty on this matter, which provides States with a range of measures to be undertaken to prevent and combat cybercrime. It also aims to strengthen international cooperation in sharing electronic evidence for serious crimes.<sup>1</sup> The Convention's nine chapters provide a comprehensive approach to prevent and combat the global problem of cybercrime while including human rights safeguards. The convention creates an unprecedented global platform for collaboration to tackle evolving cybercrime challenges, including the illegal access and interception of electronic data, online child sexual abuse, and

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<sup>1</sup> <https://www.unodc.org/unodc/en/cybercrime/convention/home.html>

money laundering. By establishing a unified legal framework, it aims to protect global digital spaces, making them safer, inclusive, and adaptable to emerging threats.

### **Objectives of the Convention:**

**Prevent and Combat Cybercrime:** The convention criminalizes various cyber offenses, including illegal access to information systems, online child exploitation, and the distribution of non-consensual explicit content.

**Strengthen International Cooperation:** It establishes mechanisms for collaboration among member states to effectively address the transnational nature of cyber threats.

**Safeguard Human Rights:** The treaty emphasizes the protection of human rights and ensures that measures to combat cybercrime do not infringe upon fundamental freedoms.

### **The United States of America**

#### **Computer Fraud and Abuse Act (CFAA)**

The Computer Fraud and Abuse Act (CFAA) is a key U.S. federal law that addresses computer-related offenses. Enacted in 1986 and codified under 18 U.S.C. § 1030, the CFAA was introduced to combat hacking, data theft, and other forms of cybercrime. Over the years, it has been expanded through amendments to cover emerging threats in the digital landscape.

#### **Key Provisions of the CFAA**

The CFAA defines a series of computer-related offenses, each carrying distinct penalties based on intent, impact, and the nature of the targeted system.

#### **18 USC 1030 : Fraud and Related activity in connection with computers<sup>2</sup>**

##### **Unauthorized Access (18 U.S.C. § 1030(a)(1))**

This provision criminalizes unauthorized access to computers to obtain:

National security data, Financial records, or Information from any U.S. government department or agency.

**Penalties:** Up to 10 years imprisonment for first offenses and 20 years for repeat violations.

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<sup>2</sup>CFAA : 18 USC 1030: Fraud and related activity in connection with computers

### **Accessing a Computer Without Authorization for Fraud (18 U.S.C. § 1030(a)(4))**

This section targets individuals who access protected computers with the intent to defraud and obtain something of value (e.g., trade secrets, personal data, or financial information).

**Penalties:** Up to 5 years imprisonment for first offenses and 10 years for repeat violations.

### **Damage to Protected Computers (18 U.S.C. § 1030(a)(5))**

This provision criminalizes: Knowingly causing damage to a protected computer by transmitting malicious software (e.g., viruses, ransomware). Intentional acts that impair data integrity, availability, or functionality.

**Penalties:** Depending on the extent of damage, penalties may include up to 10 years imprisonment for first offenses and 20 years for repeat offenses.

### **Trafficking in Passwords (18 U.S.C. § 1030(a)(6))**

Criminalizes the distribution of passwords or other authentication methods that facilitate unauthorized computer access.

**Penalties:** Up to 1 year imprisonment for first offenses and 10 years for repeat offenses.

### **Threats and Extortion (18 U.S.C. § 1030(a)(7))**

This provision criminalizes attempts to extort individuals or organizations by threatening to damage computer systems, steal sensitive data, or expose private information.

**Penalties:** Up to 5 years imprisonment for first offenses and 10 years for repeat violations.

## **European Union**

### **General Data Protection Regulation (GDPR), 2018**

The General Data Protection Regulation (GDPR), enforced on May 25, 2018, is a comprehensive data protection law enacted by the European Union (EU) to strengthen individuals' privacy rights and establish uniform data protection standards across member states. It applies not only to EU-based organizations but also to any entity worldwide that processes the personal data of EU citizens. The GDPR is built on key principles such as lawfulness, fairness, transparency, data minimization, and integrity, ensuring organizations handle personal data responsibly. It grants individuals extensive rights, including the right to access, rectification, erasure (right to be forgotten), and data portability. Organizations are

required to obtain clear consent, implement robust security measures, conduct Data Protection Impact Assessments (DPIA) for high-risk activities, and appoint a Data Protection Officer (DPO) when necessary. In case of data breaches, organizations must notify authorities within 72 hours. Non-compliance can result in severe penalties of up to €20 million or 4% of annual global turnover. GDPR's extraterritorial reach has significantly influenced global privacy frameworks, setting a new standard for data protection practices worldwide.'

### **The Prevailing Landscape of Cybercrime in India:**

Cybercrime in India is a growing concern, witnessing a significant increase in cybercrime incidents in recent years, reflecting both the rapid digitalization of services and the challenges in cybersecurity awareness and infrastructure. With reported cases and financial losses increasing annually, particularly cyber fraud. The government is addressing this through initiatives like the National Cyber Security Policy 2023, the National Cyber Crime Reporting Portal, and the Indian Cyber Crime Coordination Centre. Even though countless measures have been taken to control the growing cyber menace the sharp increase in the nascent digital crimes have been quite evident emphasizing the need for a robust cyber security laws. In the fiscal year 2024, high-value cyber fraud cases in India surged over fourfold, resulting in losses totalling approximately \$20 million. The number of cases involving amounts exceeding 100,000 rupees escalated from 6,699 in the previous fiscal year to 29,082 in 2024. This uptick is largely attributed to the proliferation of digital financial transactions and a general lack of cybersecurity literacy among the populace. Fraudsters have employed tactics such as impersonating officials and leveraging artificial intelligence to deceive individuals.

### **Fraud and Identity Theft**

**Fraud** is defined as the deceptive process or procedure used on another person (victim) to gain a dishonest advantage in pursuit of some financial gain.

**Identity Theft** involves the unauthorized possession of someone's personal information enabling them to impersonate the individual to pursue some financial gain.

## **Information Warfare**

Every form of digital crime involves the manipulation of data or information. Information Warfare is the use of information to gain some advantage or competitive edge. It entails propagating viruses, malicious software, network exploration or performing information hijacks in cyber-attacks.

## **Phishing Scams**

With phishing scams the attacker presents himself as a trustworthy or authentic person or entity in some form of electronic communication (email, text messaging) and in the process successfully distributes malicious links, attachments or files capable of executing unauthorized functions on the victim's system.

## **SPAM**

Spamming is the distribution of unsolicited emails to multiple email addresses using an electronic messaging system (emails and text messages). The communication is unrequested, unfamiliar and unwanted by the recipient. It is often used as a cost-effective means of commercial advertising.

Not only these crimes, but in the ever-evolving digital landscape, nascent forms of cybercrime are emerging with increasing sophistication, leveraging cutting-edge technologies to exploit vulnerabilities and perpetrate malicious activities. One such threat is the misuse of deep fake technology, where artificial intelligence is employed to create hyper-realistic audio and video forgeries, enabling everything from disinformation campaigns to non-consensual pornography and identity fraud. Similarly, crypto jacking where cybercriminals surreptitiously hijack computing resources to mine cryptocurrencies, often embedding malicious scripts into websites or ads. The advent of AI-powered cyberattacks has further escalated the threat landscape, as machine learning algorithms are now being weaponized to automate phishing schemes, crack encryption, and identify system vulnerabilities with unprecedented efficiency.

Synthetic identity fraud, a more insidious form of financial crime, which are used to perpetrate large-scale fraud. The rollout of 5G networks, while transformative, has expanded the attack surface, exposing new vulnerabilities in the interconnected ecosystem. On the horizon, quantum computing poses a looming threat to current cryptographic standards, potentially rendering existing encryption methods obsolete. Additionally, the rise of fake apps and websites, often distributed through legitimate channels, underscores the challenges of digital trust. As these sophisticated digital crimes proliferate, the imperative for robust, adaptive cybersecurity measures has never been more pressing, demanding continuous innovation and vigilance from individuals, organizations, and governments alike.

### **Recommendations for fortifying the Bharatiya Nyaya Sanhita to Combat Evolving Cyber threats**

1. By incorporating definitions for emerging cyber offenses such as ransomware intrusions, deep-fake technology, crypto-jacking, and AI-driven cyber incursions can help expand the scope of cybercrime classifications will facilitate the prosecution of advanced digital threats.
2. Embedding robust data protection provisions aligned with global frameworks like the General Data Protection Regulation (GDPR) and the California Consumer Privacy Act (CCPA) would fortify individual privacy rights.
3. The BNS should adopt meticulous guidelines for digital forensic methodologies, electronic evidence preservation, and chain of custody protocols to ensure evidentiary integrity in judicial proceedings.
4. The punishments given for the offence shall be based on the gravity of the offence.
5. The lack of awareness among the people as to the emerging cyber menace should be addressed.
6. The BNS should address risks posed by emerging technologies such as blockchain, cryptocurrencies, artificial intelligence and quantum computing by formulating

comprehensive regulatory frameworks to mitigate associated vulnerabilities.

7. Enforcing robust security protocols such as end-to-end encryption, multi-factor authentication, and mandatory incident reporting can bolster platform accountability.
8. Stringent sanctions for non-compliance with cybersecurity norms should be instituted.
9. The effective implementation of the provisions of the Bharatiya Nyaya Sanhita is required to control these cybercrimes effectively so as to promote justice.

### **Conclusion:**

In an era where digital technology is omnipresent, cybersecurity is no longer optional—it is a necessity. Governments, businesses, and individuals must adopt a proactive cybersecurity strategy to mitigate risks, ensure privacy, and protect critical digital assets. The Bharatiya Nyaya Sanhita (BNS) epitomizes a significant stride in India's endeavours to combat digital crimes and fortify cyber security. However, its efficacy is circumscribed by several lacunae, including the absence of comprehensive data protection legislation, inadequate provisions for nascent threats, and limited international collaboration. The recommendations delineated in this paper furnish a roadmap for enhancing the adequacy of the BNS and ensuring robust cyber security in India. India can fortify its legal architecture and better shield its citizens from the burgeoning threat of digital crimes. Thus, strengthening cybersecurity infrastructure will be instrumental in shaping a resilient and secure digital future.

In an era where digital technology is omnipresent, cybersecurity is no longer optional—it is a necessity. Governments, businesses, and individuals must adopt a proactive cybersecurity strategy to mitigate risks, ensure privacy, and protect critical digital assets. The Bharatiya Nyaya Sanhita (BNS) epitomizes a significant stride in India's endeavours to combat digital crimes and fortify cyber security. However, its efficacy is circumscribed by several lacunae, including the absence of comprehensive data protection legislation, inadequate provisions for nascent threats, and limited international collaboration. The recommendations delineated in this paper furnish a roadmap for enhancing the adequacy of the BNS and ensuring robust cyber security in India. India can fortify its legal architecture and better shield its citizens

from the burgeoning threat of digital crimes. Thus, strengthening cybersecurity infrastructure will be instrumental in shaping a resilient and secure digital future.

## 16. BEYOND THE BARS Custodial DEATHS AND CONSTITUTIONAL GAPS

**Author: Partheebavelan. A1**  
**Co-Author: Shanmugapriya. A2**

### ABSTRACT

*Custodial deaths in India reflect a profound violation of human rights, showcasing the dissonance between constitutional protections and actual practices within the criminal justice system. The Constitution of India enshrines the right to life and personal liberty, emphasizing the dignity of every individual. However, despite these guarantees, custodial violence persists, often arising from a culture of impunity within law enforcement agencies. The systematic issues contributing to custodial death include inadequate training for police personnel, lack of accountability, and the marginalisation of vulnerable communities. Victims frequently come from disadvantaged backgrounds, highlighting the intersection of socio-economic factors and human rights abuses. Furthermore, the investigation and reporting of custodial deaths remain deeply flawed, with a tendency for law enforcement to shield their own. This environment of secrecy and lack of oversight perpetuates the cycle of violence, making it imperative to establish robust mechanisms for accountability and transparency. To address the crisis of custodial deaths, comprehensive reforms are essential, focusing on enhancing training for law enforcement, ensuring rigorous investigative protocols, and promoting a culture of respect for human rights. This paper spotlights about bridging the gap between constitutional ideals and the realities of custodial practices is crucial for restoring public trust in the justice system and safeguarding individual rights.*

**Keywords:** *Custodial death, Custodial violence, Human rights, Right to Life, Police accountability.*

### INTRODUCTION:

Custodial death is not a recent concept, especially in India where the phenomenon of custodial death has been carried out since the times when India's sovereignty was in the hands of Britishers. Police brutality and violence have exponentially grown over the last four-

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five years. It reflects a dearth of legal provisions in our judicial system to reprimand law enforcing authorities for carrying out brutal practices and resorting to torture by using ‘performance of duty as a defence. Police brutality often causes grave injuries to the accused and to prevent such mishaps, the police forces should be warned to use reasonable amounts of force. The perception created by the media against the accused is also a contributor to custodial violence. The death of George Floyd in the USA due to police brutality led to a whole new movement “Black Lives Matter”. The death of Jayaraj and Bennix in the custody of Tamil Nadu enraged public sentiments and people voiced for having an adequate mechanism to prevent the police torture. These incidents highlighted the absence of anti-torture law in India and the voices have been raised to have an act in place to prevent such incidents from happening.

## **WHAT IS CUSTODIAL DEATH?**

*Injustice anywhere is threat to justice everywhere. - Martin Luther King*

Custodial death is an illegal act, where demising of person takes place and such accused is under the custody of police, which may be brought in the occasion of being under trial or police have suspected that such person have committed cognizable and non- bail able offence. Custodial death is like a black spot-on whole police department. Usually, custodial death takes place where police is conducting investigation of such offences.

1. Custodial death refers to the death of an accused during pre-trial or after conviction. The death is caused by the direct or indirect act of police during their custody.
2. It includes death occurring not only in jail but also on medical or private premises, or in police or another vehicle.

### **Custodial deaths can be classified into three types:**

1. The death occurred in police custody.
2. The death occurred in judicial custody.
3. The death occurred in the custody of army or paramilitary forces

For solving cases and get fame in short period of time police tortured accused under his custody to confess such offence, which cause police officer get promoted on the basis of solving cases or their previous record.

There is no specific definition of custodial death as it is not defined anywhere in the law but in the case of shri D.K Basu<sup>3</sup> and Ashok K. Johri<sup>4</sup> vs. State of West Bengal and State of U.P In this case hon'ble court define custodial torture as "it is done on human being by another human being where to impose his will, it is done by "strong" over "poor". In present scenario the term "Torture" is become synonymous to darker side of human civilization<sup>5</sup>.Custodial death is defined as the death of a person due to any form of torture or cruel, inhuman or degrading treatment by the police officers, whether it occurs during investigation, interrogation or otherwise. It is perhaps one of the worst crimes in a civilized society governed by the rule of law.

### **Custodial Torture**

Torture is something which even destroys the human soul also and there is no medicine or any procedure to heal up from such things. Torture cannot consider be only physical torture but also be count as a mental torture as well and when human body cannot able be handle such physical violence then such torture take place into death.

India has not ratified the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment despite being a signatory since 1997. Despite the Law Commission's proposal of an anti-torture law in 2017, India does not have any anti-torture law. These are some of the key reasons behind the non-reduction of instances of custodial torture and deaths.

### **Judicial and police custody:**

Custody means keeping an individual in protective care based on the apprehension that he or she may cause harm to society.

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<sup>1</sup>DK Basu v. State of West Bengal case is (1997) 1 SCC 416

<sup>4</sup>1997 AIR SCW 233

<sup>5</sup>D.K. Basu v State of West Bengal.

The term arrest is not is defined in anywhere even though not in the BharatiyaNagarik Suraksha Sanhita,2023 but in section 43 of the Sanhita defines how to arrest. The term ‘arrest’ means that an individual is formally taken into police custody on suspicion of committing a crime. Thus, in every arrest there is custody but vice versa is not true.

**What is police custody?** In police custody, a suspect is kept in the lockup<sup>6</sup>. In police custody, the detainee is held for not more than 24 hours in jail at a police station and during this time the officer-in-charge interrogates the suspect. Police officers must produce the suspect before the judge within 24 hours of detention<sup>7</sup>.

**Judicial custody:** When a suspect is kept in jail by the order of the concerned magistrate, he is said to be under judicial custody (the accused is kept in the custody of the magistrate of the concerned area).

**Who is prisoner and a person in a custody:**

**Prisoner** ;A prisoner is a person who is convicted of an offence by the court of law. The conviction is for a particular term, which he has to serve in prison.

**A person in custody:** A person in custody is the suspect of a crime, who has been arrested and is being kept in lockup, until he can be tried in a court of law.

**Extra judicial killing (encounter by police):**

“Every encounter is per se a custodial death, while vice-versa is not true.” In order to distinguish between custodial death and encounter, it is important to ascertain that in custodial death the suspect is killed because of torture or cruel, inhuman or degrading treatment by the police officers during the custody, whereas in an encounter the police officer kills the suspect and takes the plea of self-defense.

Thus, both are the extra-judicial killings by the police officers, with a slight variation, due to the plea of self-defence by police officers in encounters, while such a plea is not found in the

<sup>6</sup><https://districts.ecourts.gov.in/sites/default/files/fct.pdf> (14 October ,2024,7.08PM).

<sup>7</sup>INDIA CONST,art 22.

cases of custodial death.

The Supreme Court in *People's Union for Civil Liberties v. State of Maharashtra*<sup>8</sup> issued a set of 16 guidelines to be followed in the investigation of deaths following police encounters, which include preserving pieces of evidence, registering an FIR without any delay, video graphing the post-mortem, independent investigation, conducting a magisterial inquiry under section 196 of the BNSS, and ensuring an expeditious conclusion of the trial. The Supreme Court discussed fake encounter in light of article 21 of the Constitution of India.

### **Custody and judicial remand under the BharatiyaNagarik Suraksha Sanhita,2023 in India**

The BNSS contains certain provisions pertains to custody & judicial remand, mentioned below

According to Section 58 of the BharatiyaNagarik Suraksha Sanhita,2023 , a police officer cannot detain a person in custody for more than 24 hours[ Section 57 of the code of criminal procedure, 1973], If a situation arises wherein, a suspect needs to be detained for more than 24 hours; the officer needs to seek special permission from the magistrate under Section 187 of the BNSS,2023[ Section 167 of the criminal procedure code, 1973]. Section 57 is known as remand or pre-trial detention.

### **NCRB data on custodial death in India:**

#### **(A) Deaths in Police Custody/Lockup (Of Persons Remanded to Police Custody by Court)**

National Crime Record bureau has maintained a record of numbers of deaths that has taken place in the Police custody/lockup (Of Persons Remanded To Police Custody By Court) from year 2002 to 2011 and it is surprising to know that even though 320 deaths have been reported during those year but only 21 police men have been charge sheeted, and what is more surprising is that none of them got convicted<sup>9</sup>.

<sup>8</sup> *People's Union for Civil Liberties v. State of Maharashtra*

<sup>9</sup>Deaths In Police Custody / Lockup During 2013 (Of Persons Not Remanded To Police Custody By Court), <https://ncrb.gov.in/en/crime-in-india>

2021 NCRB REPORT SAYAs many as 88 persons died while in police custody in India last year, of which Gujarat recorded the highest number of such deaths, the latest report released by the National Crime Records Bureau (NCRB)

In 2020, 76 custodial deaths were reported in India and a 13.63 percent increase has been noted in 2021<sup>10</sup> Twenty-three people died in police custody in Gujarat in 2021 - a 53 percent rise from 15 in 2020 - as per NCRB. The western state had logged the greatest number of custodial deaths in the previous year as well Reasons for custodial death stated by NCRB REPORT<sup>11</sup>

**REASONS AND DATA ARE MENTIONED BELOW COVERED BOTH STATES ANDUT**

REASONS FOR DEATH IN CUSTODY	STATES	UNION TERRITOIRES	TOTAL
Suicide	31	0	31
Death due to illness	38	0	38
Injuries sustained prior to police custody	4	0	4
Injuries sustained during the police custody due to physical assault by police	6	0	6
While Escaping from Custody	3	0	3
Road Accidents/ Journey Connected with	1	0	1

<sup>10</sup> <https://www.thequint.com/cyber/crime/88-custodial-deaths-in-india-gujarat-highest-for-second-year-national-crime-records-bureau-report>].

<sup>11</sup>Deaths In Police Custody / Lockup During 2021,,<https://ncrb.gov.in/en/crime-in-india>TABLE 16A.3 Reasons of Custodial Deaths - 2021

Investigation			
Others	5	0	5
<b>Total</b>	<b>88</b>	<b>0</b>	<b>88</b>

According to National Crime Records Bureau (NCRB) data, Over the last 20 years, 1,888 custodial deaths were reported across the country, 893 cases registered against police personnel and 358 personnel charge-sheet. But only 26 policemen were convicted in this period, official records show.

### **Recent Incidences of custodial death in India**

**TUTICORIN (THOOTHUKUDI) CASE** After a father-son duo, P Jayaraj and J Bennix, from Sathakulam in Thoothukudi Tamil Nadu, died in police custody, the case caught attention. The same also garnered heat because of its timing.

**FAIZAN CUSTODIAL DEATH CASE** Faizan was one of the victims of the Riots, which took place in North East Delhi. During the Delhi Riots in February 2020, a video had surfaced where police personnel were seen harassing and assaulting a bunch of young men, forcing them to sing ‘Vande Mataram’. Two days after being illegally detained, he was subsequently released, but due to severe injuries, he couldn’t survive.

**The custodial death of a Dalit youth in Chennai again sparks outrage and highlights the urgent need to humanize the police force<sup>12</sup>.**the bothmens were beaten severely with casuarina logs and subjected to other third-degree torture till the early hours of April 19. Vignesh started vomiting and developed seizures. He was taken to a private hospital nearby and then rushed to the Government Kilpauk Medical College Hospital, where he was declared “brought dead”.

### **INTERNATIONAL LAWS DEALING WITH HUMAN RIGHTS**

<sup>12</sup><https://frontline.thehindu.com/the-nation/human-riglits/spectre-of-brutality-custodial-death-m-cheimai-shocks-tamil-nadu>

**Universal Declaration of Human Rights, 1948 (UDHR)** According to Article 5<sup>13</sup> of UDHR, no person should be tortured or treated with cruelty, irrespective of the geographical location of the individual.

**Article 6 of the International Covenant on Civil and Political Rights**<sup>14</sup> states that every individual has the inherent right to life and no one should be arbitrarily deprived of his right to life. ICCPR prevents cruel, degrading and inhuman treatment of prisoners. No individual shall be arbitrarily arrested or detained.

### **United Nations Standard Minimum Rules for the Treatment of Prisoners, 2015**<sup>15</sup>

**Section 6** of the Convention discourages any discrimination against prisoners based on race, color, sex, language, religion, political or another opinion, national or social origin, property, birth or another status.

**Section 7** of the Convention calls for the maintenance of the register to keep a record of the prisoner entailing the identity of the prisoner, the reasons behind his actions and the day of his admission and release from the cell.

**Section 8** deals with the protocols for keeping prisoners in the cell. This Section states that male prisoners and female prisoners should be allocated to different institutions and should be kept as far as possible.

### **VIOLATION OF RULE OF LAW**

Custodial death because of torture and violence by police goes against the fundamental structure of the Constitution of India and as a result, it violates various fundamental laws that are guaranteed by the Constitution.

**Article 20(1)**<sup>16</sup>: This Article states that no person shall be convicted of any offence, except

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<sup>13</sup>Article 5, UDHR, 1948.

<sup>14</sup>Article 6, ICCPR, 1966.

<sup>15</sup>[www.unodc.org](http://www.unodc.org) 9the nelson Mandela rules

<sup>16</sup>INDIA CONST, art 20(1).

those which are in contravention of the law in power at the commission of the Act. Thus, this law prohibits punishment above what is mentioned in the law that deals with the offence.

**Article 20(3)<sup>17</sup>:** Article 20(3) prohibits a person to be compelled to be a witness against himself. It is an extremely instrumental law as it protects the accused from giving confessions when the accused is coerced or tortured to do so. Under Section 180 of the BNSS,2023, police have the right to interrogate the accused; but during an investigation, if police resort to coercion to seek out information from an accused, it would be termed as forced testimony. Forced testimony is violation of Article 20(3) and thus, it is not considered.

**Section 182 of Bharatiya Nagarik Suraksha Sanhita,2023<sup>18</sup>:** This Section of BNSS,2023 prohibits any investigating officer to use a threat or any other sort of inducement to obtain a confession from the accused which would be presented as evidence against him.

**Section 183(4) of Bharatiya Nagarik Suraksha Sanhita,2023<sup>19</sup>:** This Section requires that signature and recordings of confessions are made properly and this should be further corroborated by the support of the Magistrate stating that confession has been made voluntarily

**Section 43 of Bharatiya Nagarik Suraksha Sanhita,2023<sup>20</sup>:** This Section explicitly states that an accused cannot be tortured to death if the accused is not alleged for an offence punishable with life imprisonment or death.

**Section 46 of BharatiyaNagarik Suraksha Sanhita,2023<sup>21</sup> :** Unnecessary restraint is prevented under Section 46 of the BNSS,2023. The accused should not be subjected to more restraint than is required to prevent his or her escape.

**Section 23 of Bharatiya Sakshya Adhinyam,2023<sup>22</sup>:** Section 23 of BSA,2023 protects to

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<sup>17</sup>INDIA CONST, art20(3).

<sup>18</sup>BharatiyaNagarikSuraksha Sanhita,2023, (act 46 of 2023) sec 182.

<sup>19</sup>BharatiyaNagarik Suraksha Sanhita,2023, (act 46 of 2023) sec 183(4)

<sup>20</sup>Bharatiya Nagarik Suraksha Sanhita,2023(act 46 of 2023), sec 43.

<sup>21</sup>Bharatiya Nagarik Suraksha Sanhita,2023(act 46 of 2023), sec 46.

<sup>22</sup>Bharatiya Sakshya Adhinyam,2023(act 47of 2023),sec 23(1).

accused from the investigating agencies. Section 23 states that if any confession is made before the police officer, it cannot be used to prove an offence against him. However, Section 23 Proviso clause of BSA,2023 provides a small exception in cases where a custodial statement might lead to the discovery of a new fact.

**Section 23(2) of Bharatiya Sakshya Adhinyam,2023<sup>23</sup>:** Section 23(2) strictly states that any confession made in custody in the absence of a magistrate would be inadmissible in the court of law.

**Section 127(8) of the Bharatiya Nyaya Sanhita,2023<sup>24</sup>:** Section 127(8) deals with wrongful imprisonment and prohibits such sort of imprisonment to obtain confessions. Wrongful imprisonment is a punishable offence which makes the offender liable for a fine and imprisonment of up to 3 years.

#### **Statutes penalizing the offence of custodial death in India:-**

There is a need for new stringent laws to tackle the issue of custodial death as the numbers in the recent past have risen exponentially. However, there are certain legal provisions in the Constitution to penalize the offence of custodial death.

**1. Section 103(1) of the Bharatiya Nyaya Sanhita,2023<sup>25</sup>:** If a police officer is liable for the death of a suspect in the course of custody, he or she will be charged with murder and would be punished under Section 103(1) of the BNS.

**2. Section 105 of Bharatiya Nyaya Sanhita,2023<sup>26</sup>:** Under Section 105 of the BNS, the police officer can be punished for ‘culpable homicide not amounting to murder. Section 106 OF BNS,2023 can also be applied if the custodial death occurred by the negligence of the police officer.

<sup>23</sup>Bharatiya Sakshya Adhinyam,2023(act 47of 2023),sec 23(2).

<sup>24</sup>Bharatiya Nyaya Sanhita,2023(act 45 of 2023),secl27(8).

<sup>25</sup>Bharatiya Nyaya Sanhita,2023(act 45 of 2023),secl03(l).

<sup>26</sup>Bharatiya Nyaya Sanhita,2023(act 45 of 2023),secl05

3. **Section 108 of Bharatiya Nyaya Sanhita,2023<sup>27</sup>**: Section 108 of BNS deals with punishments associated with abetment to suicide. If it is found that the suspect has committed suicide under custody and if the policeman has abetted the suicide; then he would be punished under section 108 of the BNS,2023.

4. **Section 120(1) of Bharatiya Nyaya Sanhita,2023<sup>28</sup>**: It has been observed that police officers' resort to violence and torture to obtain confessions and in the process, grave injuries occur to the accused. Section 120(1) of BNS deals with punishment for causing voluntary hurt.

5. **Section 120(2) of Bharatiya Nyaya Sanhita,2023<sup>29</sup>**: In case grievous hurt is caused to the accused during custody; it will amount to punishment to a police officer for causing voluntary grievous hurt.

6. **Section 196 of the Bharatiya Nagarik Suraksha Sanhita,2023<sup>30</sup>** : Section 196(1) empowers a magistrate to hold an inquiry relating to the cause of death; when death occurs in the course of custody. Section 196(1) of the BNSS,2023 If a person dies, disappears or if a rape is committed on any woman while the accused is under custody, an investigation will be launched and an inquiry would be held either by the Metropolitan Magistrate or Judicial Magistrate depending upon the jurisdiction of the offence committed.

8. **Section 7 of Indian Police Act<sup>31</sup>**: Section 7 of the Indian Police Act empowers senior police officers to dismiss or suspend a police officer in case the officer has been negligent in discharging the duty.

9. **Section 29 of the Indian Police Act<sup>32</sup>**: Section 29 contains legal provisions for penalizing police personnel for carrying out their duty negligently. The penalty includes imprisonment for up to three months for imprisonment with or without hard labour for a maximum term of three months.

<sup>27</sup>Bharatiya Nyaya Sanhita,2023(act 45 of 2023),secl08

<sup>28</sup>Bharatiya Nyaya Sanhita,2023(act 45 of 2023),secl20(l)

<sup>29</sup>Bharatiya Nyaya Sanhita,2023(act 45 of 2023),secl20(2)

<sup>30</sup>BharatiyaNagarik Suraksha Sanhita,2023(act 46 of 2023),secl96

<sup>31</sup>Indian Police Act, 1861 (act 5of 1861),sec7

<sup>32</sup>Indian Police Act, 1861 (act 5of 1861),sec29.



## **Statutory Provisions relating to protection of rights of accused.**

### **1. The prison Act, 1894<sup>33</sup>**

Prison Act 1894 is the first legislation act, which state about the rights of prisoner like

There must be proper and sanitary accommodation.

Provision introduced related to physical and mental health issues.

Provide Medical facilities and examine time to time to record health condition of prisoner.

Separate cell was made for the children, female, male, habitual convicted person and under-trial prisoners.

### **3. The transfer of prisoners Act, 1950<sup>34</sup>**

As India is one of the second leading country in population and crime rate is also increasing day by day, as compare to south India, north India makes larger contribution in case of heinous crime, near about 60% of murder and rape are committed in north side of India. As Indian are always ready to face future challenges, that's why provision was made to transfer prisoner from one state to another state, as create problem to keep over- populated prisoner in one place.

### **4. Law Commission 113th Report, 1985<sup>35</sup>**

Under this commission report, it was suggested that the burden of proof must be lies on prosecution i.e., police alleged that bodily injury occurs on arrested person were given in police custody or not. Moreover, suggestion was made to insert section 114B under Indian Evidence Act 1984, which provide safeguard to defense as presumption would made if in case evidence were found that such body injury cause during police custody. Moreover, while considering question of presumption for the said suggestion, on the same other relevant must also be consider like at what time period accused was in police custody, what was his medical condition at that time and what are the evidences record by the magistrate.

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<sup>33</sup>The prisons Act, 1894 (act IX of 1894).

<sup>34</sup>The Transfer of prisoners Act, 1950 (act 29 of 1950).

<sup>35</sup> Law Commission of India <https://lawcommissionofindia.nic.in/report113/> .(last visited on 19 oct,2024).

## 5. Law Commission 152nd Report, 1994<sup>36</sup>

These particular reports dealt with the issue of arrest and abuse the authority by the police officer. This report again suggests introducing section 114B under Indian Evidence Act 1872 As it was previously recommended in 113th report of law commission. Law commission 152nd report further suggested to amend Code of Criminal Procedure and introduced section 41(1 A) so that it would be duly record why such arrest was made and also add section 50A under the code, so that nominated person get to know about the arrest of his concern person.

## 6. National Human Rights Commission<sup>37</sup>

NHRC, on 4/09/2020 issue an order “for a mandatory judicial magistrate inquiry into every case of death in police or other custody, authorized by the court under section 176(1 A) of Code of Criminal Procedure”.

### Role of judiciary to curtail the custodial violence:

**1. Joginder Kumar v. State of U.P and others, 1994<sup>38</sup>**In this landmark case, the Court observed that the rights under Articles 21 and 22(1) of the Constitution need to be recognized and must be protected. The Court issued a few guidelines to ensure the protection of these rights. An entry needs to be maintained in the register which contains the information about who was informed about the arrest of the accused. Articles 21 and 22(1) should be strictly recognized and enforced. The Magistrate shall determine whether all the requirements are fulfilled and obeyed by the police authority.

**2. Prabhavathamma v. the State of Kerala and others,2007<sup>39</sup>**,The case pertained to the death of a scrap metal shop worker in custody in Thiruvananthapuram. The hearing of the

<sup>36</sup>Law Commission of India: The 152nd Law Commission of India Report on Custodial Crimes (1994)<https://lawcommissionofindia.nic.in/https-cdnbbbsr-s3waas-gov-ins3ca0daec69b5adc880fb464895726dbdf-uploads-2023-06-2023060150-pdf7> (last visited on 19oct,2024).

<sup>37</sup>National Human Rights Commission.  
[https://nhrc.nic.in/sites/default/files/Guidelines conducting Magisterial Enquiry in cases of CD or police action.pdf](https://nhrc.nic.in/sites/default/files/Guidelines%20conducting%20Magisterial%20Enquiry%20in%20cases%20of%20CD%20or%20police%20action.pdf) (last visited on 19 oct, 2024).

<sup>33</sup>Joginder Kumar v. State of U.P and others, 1994 AIR1349,1994 SCC(4) 260.

<sup>39</sup>J. Prabhavathamma v. the State of Kerala and others, WP (C) NO. 24258 of2007 (k).

case lasted for a decade and the CBI Court ultimately sentenced the two accused serving personnel to the death penalty. Justice Nazar remarked that the police officers have brutally murdered the victim and have adversely affected the reputation of the police institution. The judge also held that such heinous acts cannot be pardoned because they will affect the law and order and it would encourage police officers to exercise their power arbitrarily.

### **3. Yashwant and others v. the State of Maharashtra, 2018<sup>40</sup>**

The case involves nine cops of the Maharashtra police who were accused of causing a custodial death in 1993, the High Court of Bombay sentenced them to imprisonment for a term of three years. The Supreme Court upheld the order of the high court and extended the punishment sentence from three years to seven years each. *Justice N. V. Ramana and M.M Shantanagoudar remarked that the unfortunate incident involving the police erodes the confidence of people in the criminal justice system.*

### **4. Smt. Nilabati Behera vs. State of Orissa and Ors<sup>41</sup>**

In this case it was held by Hon'ble Court, that every person has right to life which includes prisoners also conformed under Article 21 of Indian Constitution. Prisoner are also having all the basis of fundamental rights and even police have not right to snatch away their life, it is a duty of police to obey the law and also protect the fundamental rights of prisoners. Moreover, court took further reference about the right of compensation in case of victim of unlawful arrest and performs torture on victim.

### **5. Munshi Singh Gautam v state of Madhya Pradesh,1999.<sup>42</sup>**

The dehumanizing torture, assault and death in custody which have assured alarming proportion raise serious questions about the credibility of the rule of law and administration of the criminal justice system the concern which was shown in ragbir sikh case more than two decades back seems to have fallen on deaf ears and the situation does not

<sup>40</sup>Yashwant and others v. the State of Maharashtra, 2018, W.P NO.3776 of1995.

<sup>w</sup>Smt. Nilabati Behera vs. State of Orissa and Ors,1993 AIR 1960, 1993 SCR (2) 581.

<sup>42</sup> Munshi Singh Gautam v state of Madhya Pradesh, Appeal (crl) .919 of1999.

seem to be showing any noticeable change.

*The anguish expressed in the case of bhagwansinha v state of Punjab, kenwalpati v state of up, pratulkumarsinha v State of Bihar, Indersingh v state of Punjab, state of MP v state of Punjab, state of MP v shyamsundertrivedi and the by now celebrated decision in the landmark case of D K basu v state of west Bengal seems “not even to have caused any softening of attitude in the inhuman approach in dealing with persons in custody<sup>43</sup>”*

## **6. D.K Basu V State Of West Bengal<sup>44</sup>**

### **Guidelines issued:**

The court issued a list of 11 guidelines in addition to the constitutional and statutory safeguards to be followed in all cases of arrest and detention. The guidelines are as follows:-

1. Details of all personnel handling the interrogations of the arrested person must be recorded in a register.
2. A memorandum of arrest at the time of arrest should be prepared.
3. It must also be signed by the detainee and must contain the time and date of the arrests.
4. Police must notify a detainee’s time, place of detention, and place of custody.
5. Police of the affected area telegraphically within the period of 8 to 12 hours after the arrest.
6. An entry must be made in the case dairy at the place of the detention.
7. The inspection memo must be signed by both the detainees and the arresting police officer and a copy must be provided to the detainee.
8. The detainee must undergo a medical examination by a trained physician every 48 hours while in custody.

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<sup>43</sup>Ibid.

<sup>44</sup>D.K.Basu V State of West Bengal, 1997(1) see 416.

9. Copies of all documents, including the arrest memo must be sent to the magistrate for registration.

10. Information about the arrest and the place of the custody of the arrested.

11. Within 12 hours after the arrest and in the police control room board, must be displayed on a visible notice board.

### **7. Ruvee Parveen V. State of NCT Delhi and Ors<sup>45</sup>.**

In a recent case of Ruvee Parveen v. State of NCT Delhi and Ors, on the 4th of May, 2021, the Delhi High Court directed DSLSA to put in motion the procedure for compensation. In the instant case, the deceased Salman was arrested on 11th November 2020 on an allegation of theft of a vehicle. He passed away on the next day of remanding to judicial custody. His wife Ruvee Parveen, the petitioner filed a petition seeking compensation of Rs. 1 crore for the violation of the fundamental right of life. DSLSA submitted to the court that Delhi Victim Compensation Scheme, 2018 has a provision to grant compensation to the legal heirs or deceased which would be a minimum of Rs.3 lacs and a maximum of Rs. 10 lacs. The Delhi High ordered the DSLSA to initiate the procedure for the grant of compensation.

### **Principles for the grant of compensation**

1. Vicarious liability of State
2. Liability under public tort
3. Recovery of compensation amount from the wrongdoer.

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<sup>45</sup>Ruvee Parveen V. State of NCT Delhi and Ors. W.P. (c) 3090/2021 & CMAPPL. 9344/2021  
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## CONCLUSION

The data presented by NHRC and NCRB reflect horrifying numbers of custodial deaths. It must be changed. Here that I feel this is situation “when our savior becomes a slayer”. The protection that police get from the state despite misusing their power is a big issue. There is a need for monitoring police actions in cases of custodial death, and police officers who act in mala fide intention must be convicted. A precedent needs to be set to make the authorities to realize that they cannot exercise their power beyond their limits. If the current scenario is to be considered, it is very difficult to say that there will be any improvement regarding custodial deaths. There is a need for stringent legal action which will be solely dedicated to punishing the personnel who misused their power and whose brutal force led to a loss of life. For ensuring the reduction of instances of custodial death, the guidelines laid down in the landmark cases of D.K. Basu v. State of Bengal and Prakash Singh v. Union of India needs to be strictly implemented. It is the duty of the prison administration to provide proper facilities for medical infrastructure, food, security, and also monitory body should be setup to watch on prison activities.

## WAY FORWARD:

1. The police officials should adopt and trained new scientific technique & psychological technique instead of torture and third-degree treatment.
2. A counsel should be allowed during interrogations to heck the custodial violence by 1.0
3. The working conditions and time of the police personnel should be improved.
4. A separate provision should be made by amending section 302 of Indian penal code regarding the treatment of custodial death.
5. The medical facilities should be provided in jails also for proper and timely treatment to provide to a person in custody.
6. The compensations in case of custodial death should be a state responsibility. The state government can recover the compensation amount from the offenders. And separate tribunals or board should be setup at the district level.
7. The most important requirement is to sanction a pension or a job for the dependent of the victims because the government is liable for the loss on the life.

## 17. DECODING WITNESS PROTECTION LAWS-INDIA'S LEGAL FRAMEWORK IN GLOBAL JUXTAPOSITION.

**AUTHOR: Shanmugapriya<sup>1</sup>**  
**CO-AUTHOR: Megha<sup>2</sup>**

### ABSTRACT

*The role of witness, cannot be much defined than the quote 'Witness are the eyes and ears of justice who aid the court in deciding upon a case'. The verdict of case deciding future of parties is highly grounded by competent witnesses. The ability to provide effective protection to witnesses, as well as assistance and protection to victims, is critically important to ensuring the successful investigation into and prosecution of organized criminal groups. The protection of witnesses is included in article 24 of the Organized Crime Convention. The purpose of this provision is to protect witnesses in criminal cases from potential retaliation or intimidation. These measures can include physical protection such as relocation, and allowing witnesses to testify in a manner that ensures the safety of the witnesses.*

*The research paper follows the Doctrinal Research Methodology with comparative analysis of international law. The research paper focuses on how witness protection ideology evolved in India. Paper studies the scope of significant provisions under BNS, BNSS and BSA pertaining to Witness Protection. The paper mainly focuses on the practical implications in implementing Witness Protection Scheme. A comparative analysis of Witness protection ideas of nations such as US, UK, Australia etc., would further enable us to understand lacunae and futuristic ultimatum in our legal system. With this the paper is also provided with suggestions to overcome the arising challenges and Ramifications.*

**Keywords:** *Witness Protection Scheme, Organized Crime Convention, International Law, BNS, BNSS.*

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## **Introduction:**

*What hurts the victim most is not the cruelty of the oppressor, But the silence of the bystander.*

- **ELISE WIESEL.**

One of the main element in dealing with criminal cases is witness. Witnesses play vital role. A single witness can change the opinion of a case. But when it comes to common people. People feel feared to appear in court as witness. People feel insecure when it comes to witness. Thus in order to avoid this, WPS was bought, so that we can uphold fair justice. The objective of this Scheme is to ensure that the investigation, prosecution and trial of criminal offences is not prejudiced because witnesses are intimidated or frightened to give evidence without protection from violent or other criminal recrimination. It aims to promote law enforcement by facilitating the protection of persons who are involved directly or indirectly in providing assistance to criminal law enforcement agencies and overall administration of Justice. Witnesses need to be given the confidence to come forward to assist law enforcement and Judicial Authorities with full assurance of safety. it is aimed to identify series of measures that may be adopted to safeguard witnesses and their family members from intimidation and threats against their lives, reputation and property.

**Research objective:** To explore the fundamentality of the witness protections in ensuring justice, analysing the ramification of witness protection scheme of India in comparision with the witness protection scheme of common law nations. The study will spotlight how incorporating common law nations principles on witness protection into India's legal frame work.

## **Research Methodology:**

This research paper utilizes a doctrinal and ground theory methodology, focusing on the examination of statutes, case laws and variety of secondary sources, including websites, books, and articles etc. As a qualitative study grounded in original research, references are provided at the foot notes for your kind perusal.

**Objective of the witness protection scheme,2018:**

1. One of the main element in dealing with criminal cases is witness. Witnesses play vital role. A single witness can change the opinion of a case. But when it comes to common people. People feel feared to appear in court as witness. People feel insecure when it comes to witness. Thus in order to avoid this, WPS was brought, so that we can uphold fair justice.
2. The objective of this Scheme is to ensure that the investigation, prosecution and trial of criminal offences is not prejudiced because witnesses are intimidated or frightened to give evidence without protection from violent or other criminal recrimination.
3. It aims to promote law enforcement by facilitating the protection of persons who are involved directly or indirectly in providing assistance to criminal law enforcement agencies and overall administration of Justice.
4. Witnesses need to be given the confidence to come forward to assist law enforcement and Judicial Authorities with full assurance of safety. it is aimed to identify series of measures that may be adopted to safeguard witnesses and their family members from intimidation and threats against their jives, reputation and property.

**About the witness protection scheme :**

Witness Protection may be as simple as providing a police escort to the witness up to the Courtroom or using modern communication technology (such as audio video means) for recording of testimony. In other more complex cases, involving organized criminal group,

extraordinary measures are required to ensure the witness's safety viz. anonymity, offering temporary residence in a safe house, giving a new identity, and relocation of the witness at an undisclosed place. However, Witness protection needs of a witness may have to be viewed on case-to-case basis depending upon their vulnerability and threat perception.

**Who can avail witness protection scheme:**

Any person who is a witness with no age bar can be benefitted from this Scheme. A person who is primarily a witness can make avail of this Scheme. The provisions in this scheme would give protection to the witness.

**Documents required :**

The application for seeking protection order under this scheme can be filed in the prescribed form before the Competent Authority of the concerned District where the offence is committed, through its Member Secretary along with supporting documents such as identity proof, threats proof. After such application, a Threat Analysis Report would be prepared. Based on the report the prescribed category of protection measures will be made.

**Current impact:**

For those who are aware of this Scheme are greatly benefited, as they can get protection and at the same time they can perform their legal duty. The impact of this Scheme actually results in the fair justice that is bought from a case. Once when witnesses are aware and protected, they give proper witness by which proper judgment can be inferred.

Witness protection programs are essential pillars of justice, providing safety to those whose testimony can unravel the most dangerous crimes, while ensuring that the rule of law remains uncompromised by threats or violence. While India has recently adopted its own Witness Protection Scheme, many common law nations had established similar frameworks long

before. Countries like Canada, Australia, and the United States offer robust models for protecting witnesses, each with unique criteria for eligibility, admission procedures, and program provisions. These systems are designed to ensure the safety of witnesses while maintaining legal transparency, confidentiality, and, in many cases, international cooperation. Understanding these global frameworks offers valuable insights into the evolution and effectiveness of witness protection in India and beyond.

### **Global Perspectives on Witness Protection: A Comparative Overview**

To analyse the scope of testimonial protection, it is essential to recognize the development of witness protection schemes across common law nations, predating India's own enactment. India's Witness Protection Scheme draws from models implemented by other countries. Below, we explore the frameworks of witness protection in several key jurisdictions.

#### **1. Canada**

The Witness Protection Program Act, 1996 in Canada defines a witness as someone who provides or agrees to provide information or evidence or participates in investigations or prosecutions. Witnesses who face security risks due to their involvement are eligible for protection under the following criteria:

#### **Eligibility**

A witness in Canada is defined as:

1. An individual who provides or agrees to provide information or evidence in relation to an inquiry, investigation, or prosecution, requiring protection due to a potential security threat.
2. Someone who assists a federal security, defence, or safety organisation and may need protection because of the risks posed by their involvement.

3. Individuals associated with a protected person who may also require protection.

Factors considered for admission include the nature of the threat, the witness's ability to adapt to the program, the value of the information provided, community safety, and program costs.

### **Admission Process:**

As per Section 6<sup>1</sup> of the Act, a witness can be admitted into the program based on:

1. Recommendations from a law enforcement or defense agency.
2. A report submitted by the Commissioner of the Royal Canadian Mounted Police (RCMP)<sup>2</sup>.
3. An agreement between the Commissioner and the witness.

### **Program Provisions:**

1. Strict confidentiality surrounding the witness's identity is maintained. Breaching this confidentiality can result in a fine of up to \$50,000 or five years of imprisonment.
2. Reciprocal agreements can be established for witness protection with foreign jurisdictions.
3. Transparency is ensured through an annual report on the program's operations<sup>3</sup>.

## **2.Australia**

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<sup>1</sup> SECTION 6,WPP ACT,1996,STATUTE OF CANADA

<sup>2</sup> SECTION 14,WPP ACT,STATUTE OF CANADA

<sup>3</sup> SECTION 16,WPP ACT,STATUTE OF CANADA

Australia's Witness Protection Act of 1994 provides comprehensive measures for the security of witnesses involved in serious criminal investigations.

### **Eligibility**

1. A witness under Australian law is defined as:
2. An individual who provides evidence in legal proceedings or investigations, either at the state or federal level.
3. A person who has made a statement to the Australian Federal Police or any approved authority concerning an offence.
4. Anyone else who may require protection due to their association with a protected individual.

### **Program Provisions**

1. The Commissioner of Police facilitates legal and contractual matters for witnesses under protection to maintain anonymity<sup>4</sup>.
2. Provisions are made for witnesses to marry under the protection program, contingent upon eligibility, and certified by the Commissioner<sup>5</sup>.
3. The Act also allows for relocation, accommodation, and transport for both witnesses and their families.

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<sup>4</sup> SECTION 17,WPP ACT,1994,STATUTE OF AUS

<sup>5</sup> SECTION 27A,WPP ACT,1994,STATUTE OF AUS

4. Like Canada, Australia mandates the submission of an annual report to Parliament on the witness protection program.(SEC.30(2))<sup>6</sup>
5. The Australian Federal Police conduct specialized witness protection training to ensure effective program implementation.

### **3.United States**

The U.S. operates its witness protection scheme under the Witness Security Reform Act of 1984, primarily managed by the Office of Enforcement Operations (OEO) and U.S. Marshals.

#### **Eligibility**

Protection is offered to witnesses involved in:

1. Organised crime and racketeering cases under Title 18, United States Code, Section 1961(1).
2. Drug trafficking cases under Title 21, United States Code.
3. Federal felonies where witnesses face threats or retaliation.
4. State-level offenses with similar serious risks.
5. Civil or administrative cases where the safety of a witness is compromised<sup>7</sup>.

#### **Protection Provisions**

The program extends to prisoner-witnesses, who can also receive protection<sup>8</sup>.

A preliminary interview is conducted by OEO to determine the eligibility of witnesses seeking protection.

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<sup>6</sup> SECTION 30(2),WPP ACT,1994,STATUTE OF AUS

<sup>7</sup> TITLE9-21.100,WSRA,1984,U.S.A

<sup>8</sup> TITLE 9-21.130,WSRA,1984,U.S.A

The U.S. Marshal Service provides around-the-clock protection and logistical support, including relocation and identity changes.

The Federal Bureau of Prisons also plays a role in protecting witnesses who are incarcerated. The U.S. Marshals work with local and state authorities and enter into reciprocal agreements with other jurisdictions for witness protection.

In safeguarding the voices of those who risk everything to speak the truth, witness protection programs reinforce the foundation of justice, ensuring that fear and intimidation do not silence the pursuit of accountability. India's witness protection system is relatively recent, it draws from the robust frameworks established by other common law nations. These programs share core similarities, such as stringent confidentiality measures, the relocation of witnesses, and reciprocal protection agreements, while adapting to the specific legal and procedural landscapes of their respective countries.

**THE VERACITY OF WITNESS AEGIS IN INDIA TODAY:** In a system where fear overshadows truth, justice stands on shaky ground. The Witness Protection Scheme is not just a reform but a necessity to ensure that intimidation does not decide the fate of justice. The Bhartiya Nagarik Suraksha Sanhitha (BNSS) 2023 marks a significant shift in the realm of witness protection by mandating the establishment of a comprehensive Witness Protection Scheme (WPS). *Section 398*<sup>9</sup> of the BNSS obligates each state government to implement and publicise such a scheme, thus embedding witness safety as a crucial element within the criminal justice framework.

This legislative development underscores that ensuring the protection of witnesses is not merely an aspirational goal but a legal obligation essential to upholding justice. The scheme classifies witnesses into three distinct tiers based on the level of threat they face<sup>10</sup>:

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<sup>9</sup> Section 398, BNSS, 2023.

<sup>10</sup> Section 3, Part II, Witness Protection Scheme, 2018.

1. Tier A: Cases where the threat extends to the life of the witness or their family members.
2. Tier B: Cases involving threats to the safety, reputation, or property of the witness or their family members.
3. Tier C: Cases where the threat is moderate, typically involving harassment or intimidation of the witness or their family.

To address these varied levels of threat, the WPS in India offers a comprehensive range of protective measures, including<sup>11</sup>:

1. Monitoring mail and telephone communications<sup>12</sup>.
2. Preventing any direct encounters between the witness and the accused during investigation or trial.
3. Changing the witness's telephone number for security.
4. Installing CCTV, alarms, and fencing at the witness's residence.
5. Regular patrolling in the vicinity of the witness's home.
6. Temporarily relocating the witness to a relative's home or a nearby town.
7. Providing escort services to and from the court.
8. Offering periodic financial assistance as needed.

Government intervention is essential in establishing and enforcing the Witness Protection Scheme, as it provides the necessary legal framework and resources to protect witnesses effectively. State authorities can ensure the implementation of standardised safety measures, allocate budgets for the Witness Protection Fund, The Witness Protection Scheme is supported by a dedicated Witness Protection Fund, which covers the expenses related to these

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<sup>11</sup> Section 7 of WPS, 2018.

<sup>12</sup> Section 7(b), WPS, 2018.

protective measures. This fund is maintained by the Ministry of Home Affairs, with each state contributing through annual budget allocations.

### **Judicial decisions on Witness Protection Scheme: Witness Security In India-A Chronicle Of Legal Evolution:**

A statement made by renowned philosopher and a social reformer, Jeremy Bentham quoted that “THOU SHALT DO NO MURDER, THOU SHALT NOT COMMIT ADULTERY, THOU SHALT NOT STEAL and THOU SHALT NOT BEAR FALSE WITNESSES” highlights the prominence of witnesses in a pristine way.

In the **STATE OF PUNJAB vs GURMIT SINGH**<sup>13</sup> Case, the Supreme Court placed a strong emphasis on in camera trials, ruling that they would preserve the witness’s dignity. Her deposition will provide high quality evidence that will assist the court in determining the truth.

In the **SAKSHI vs UNION OF INDIA**<sup>14</sup> to use a screen or similar device to prevent the accused from meeting the witness in person. Because of the accused’s appearance or visibility to the witness, the witness may become afraid and unintentionally provide evidence.

In the **STATE OF MAHARASHTRA vs DR.PRAFUL B. DESAI**<sup>15</sup>Case, the admissibility of evidence captured by video conference was decided to be valid. The Supreme court affirmed the legitimacy and legality of video conferencing, ruling that it is allowed to capture evidence using this method.

In **STATE OF GUJARAT V.ANIRUDH SINGH**<sup>16</sup>, The Supreme court of India held that “it is the salutary duty of every witness who has the knowledge of the commission of the

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<sup>13</sup> 1996 AIR 1393

<sup>14</sup> **1999CRILJ5025**

<sup>15</sup> 2003 (4) SCC 601

<sup>16</sup> 1997 SCC514.

crime, to assist the state in giving evidence”.

In **ZAHIRA HABIBULLA H.SHEIKH AND ANOTHER V. STATE OF GUJARAT**<sup>17</sup> “  
If the witness get threatened or are forced to give false evidence that would not result in a fair  
trial”

### **Posterity Directions:**

One of the ramifications that’s persisting often comes at the cost of their civil rights. The  
scheme must be articulated to ensure that witnesses can exercise their civil liberties without  
compromise.

Establishing a Memorandum of Understanding (MoU) between the prospective witness and  
the government would be beneficial to clearly outline the scope of rights, the range of  
facilities, and the termination conditions for witness protection.

Specialized training programs should be mandated for agencies tasked with witness  
protection to enhance their efficiency and effectiveness.

Witness protection laws must be homogeneous across India to avoid the pitfalls of a  
fragmented regional approach as opposed to the present framework under Section 398 of the  
Bhartiya Nagarik Suraksha Sanhitha,2023.

Adopting reciprocal principles in witness protection India would strengthen safety net for  
witnesses.

Post judgment protection as a prime concern so that witnesses will remain safeguarded even  
after the trial concludes.

The present framework does stretch protection to prisoner witnesses. Legal provisions should

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<sup>17</sup> 2004(4)SCC 158.

be introduced to guarantee the rights and safety of witnesses who are also incarcerated.

There should be a greater push for the agency by submitting the annual reports of their progress to guarantee transparency and public trust I could see lack of awareness among public about this scheme. Not only among public, even legal professionalise and practitioners lack knowledge about this scheme. A scheme which is essential for a trail could not be ignored just because of lack of awareness. So its important to make people aware of this Scheme.

As we strengthen the pillars of witness protection, we fortify the entire justice system ensuring that the pursuit of truth is met with unwavering support and that every voice is safeguarded against the shadows of intimidation.

### **Conclusion:**

The saga of witness protection in India unfurls as a powerful narrative of justice awakening to the indispensable value of those who step forward to speak the truth. For decades, the clarion call for a cohesive framework resonated through corridors of legal thought, from the Law Commission's 14th report in 1958 to the Supreme Court's historic verdicts. The 2018 Witness Protection Scheme shattered the silence that had haunted this crucial issue, budding of robust protocols to shield witnesses from the shadows of threat and fortifying that their voices remained untainted. The momentum surged ahead in 2023 with the Bhartiya Nagarik Suraksha Sanhitha a bold mandate compelling state governments to weave a thorough witness protection network. Inspired by the trailblazing systems of Canada, Australia, and the United States, India's own evolving approach boldly declares that the nation's will shall not bend before the tyranny of perpetrators. With each stride India reaffirms the bedrock of its justice system: no fear will silence the truth, and no threat shall obscure the light of justice.

## 18. BHARATIYA NYAYA SANHITA: A DEEMED NECESSITY, YET ANOTHER PROGRESSIVE DECLINE

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### ***Abstract***

*The society is dynamic and thus the law is! There is no law evergreen and every law are floating and changing with the versatile needs of the society. With each progressive step a society take up to leap forward requires the law for backup. One such step taken by the Indian government in its so-called decolonizing can be seen its move of repealing the old criminal laws and replacing it with the revised version. But, does that step worth taking? or was it an attempt of abrupt failure?*

*The question when trailed down, attempts to compare the old Indian Penal Code, 1860 and the new Bharatiya Nyaya Sanhita, 2023 for a comprehensive understanding of the current landscape of the Indian Criminal Justice system. The pre-existing Indian Penal Code cannot fully be termed as a colonial legislation as it had undergone all necessary amendments to address the Indian post-independence needs. But the new indigenous law is not totally free from colonial shadow as almost 90% of the legislation was a copy of the old Act. Though the reform was preliminarily aimed at transforming the colonial spirit yet led to its continuity with even a stronger hold on free spirit of public by providing more power to the State. With changes in letters and not on spirit due to lack of instrumental infrastructural changes the reforms made in 10% of the Act renders unfruitful.*

*The procedural flaws and the structural changes that enhances the power of Police pose a threat to the Constitution and its basic structure that protects our rights. This paper will analyse all the aspects of the BNS to critically analyse its implications in the Indian Society.*

**Keywords:** *Bharatiya Nyaya Sanhita (BNS), Indian Criminal Justice system (IPC), Colonial Legislation, Reform, Legislation*

## INTRODUCTION

The paper analyses the circumferences of the deemed *Indianization of the criminal justice system* by the government of India. This claim though looks fancy cannot be completely accepted as the old IPC was essentially Indianized version as it was amended more than 75 times to suit for the dynamic fundamental and structural changes necessary for the Indian soil. Also, the changes made in Bharatiya Nyaya Sanhita is mere cosmetic and not substantial. A paradigm shift in penal law of India is the need of the hour with crime dynamics increasing day by day. But the shift that is established in the new law did not fulfil the required essentials. The procedural irregularity and the unceremonious push of this piece of legislation that did not went through the scrutiny of parliamentary debate raises concerns as there was no input received from the opposition to enrich the laws. Another main concern is the generalization of certain draconian laws by adding them in main stream penal law enhancing the discretion of police.

This paper analyses the new penal law in the light of social circumstances. This research employs secondary data to study and analyses the changes adopted to provide a comprehensive view of the new law and understand the percentage of objective it reached in its attempt to Indianization.

## REVIEW OF LITERATURE

1. Decolonisation of IPC | The Paradigm shift in India's criminal justice system with idea of 'Nyaya' under BNS<sup>1</sup>. By Deeksha, Published on 1<sup>st</sup> July 2024. The author clearly analyses the IPC and BNS to provide the differences brought in the new law. The author delves deep into the positive side of the new Act deeming it necessary of the hour. The author structurally differentiated the new law with the old for a comprehensive understanding.
2. Changes Brought Forth by the Bharatiya Nyaya Sanhita, 2023 by Saurab Bindal,

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<sup>1</sup> <https://www.sconline.com/blog/post/2024/07/01/decolonisation-of-ipc-understanding-bharatiya-nyaya-sanhita-2023/>

Pranav Mathur published on July 4 2024.<sup>2</sup>

3. The authors clearly analysed the additions and alterations made in the new Act. They tabulated the differences for a more detailed analysis. They begin from the justification of title till the conclusion provided more positive notes about the new Act.
4. New criminal codes, the same old problems, By Abishek Singhvi published on July 17, 2024.<sup>3</sup>
5. The author criticized the government's move by pointing out the indexes of change made in the new Act. The author questions the Government's attempt to enhance the state's power over the civil liberties of the people. The author critically analysed the over reach and its potential impact.

## HYPOTHESIS

The decolonization of IPC is not attained through the Bharatiya Nyaya Sanhita as it did not render any substantial, fundamental and structural changes.

Bharatiya Nyaya Sanhita is a failed attempt in Indianizing criminal justice system as the changes are mere incremental which could have been made through an amendment.

The non-applicability of settled precedents of Indian Penal Code, 1860 on Bharatiya Nyaya Sanhita delays justice delivery.

## SCOPE

1. The paper analyses the origin and amendments of Indian Penal Code, 1860 and compares it with the new Act to check for the existence of colonial element in the attempt of Indianizing the code.

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<sup>2</sup> <https://www.foxmandal.in/changes-brought-forth-by-the-bharatiya-nyaya-sanhita-2023/>

<sup>3</sup> <https://indianexpress.com/article/opinion/columns/new-criminal-codes-same-old-challenges-of-the-justice-system-9577694/#:~:text=One%20of%20the%20ambitious%20aspects,cope%20with%20the%20stringent%20timeline>

2. The paper checks if the changes made in the new Act genuinely reflect the changing dynamics of society and renders Nyaya to all forms of modern-day crimes.
3. The research examines the question of legitimacy of BNS by analysing the procedural flaws in the enactment of the Act in light of the absence of parliamentary scrutiny of the Bill by the opposition.
4. The research analyses how the new Act provides excess discretion to Police creating power imbalance between state and citizen and the following impact upon the civil liberties of the citizen.
5. The paper attempts to enhance the understanding on new Act, and provide recommendations in the places requiring changes.

### **STATEMENT OF PROBLEM**

The paper analyses Government of India's attempt to Indianize the Criminal law by repealing Indian Penal Code, 1860. The repealing of IPC is necessary as it lacks the elements of digitalization and cyberspace which the government tries to improve in its mission of Digital India. Yet the attempt of the Government seems render no justice to its objective as most of the provisions remain unchanged providing continuity to the colonial legacy. No comprehensive provision to address the crimes of contemporary nature questions if there is necessarily any change made intending progression of society.

The paper attempts to check the benefits of Bharatiya Nyaya Sanhita over IPC by comparing both the Act. The paper delves into the areas of change to check if those shifts are brought in to render Nyaya or curtail the civil liberties of the citizens.

### **OBJECTIVE**

1. To understand the changes brought in Bharatiya Nyaya Sanhita, 2023 by comparing it with the Indian Penal Code, 1860.
2. To analyse if there is any attempt to progress made to enhance the Penal system of India by addition of new crimes.
3. To check if new provisions are added to counter the change in the crime dynamics of Indian system.

4. To find if the new law added any stringent punishments or substitutes to curtail the crime rate in India.
5. To conclude if the Government passed in its attempt to eliminate the colonial legacy of Indian criminal justice delivery system.

## **METHODOLOGY**

The methodology of this doctrinal research is designed to provide comprehensive view on the new criminal law of India the Bharatiya Nyaya Sanhita. The study relies on secondary data collected from a broad range peer-reviewed journals, newspapers, government index, legal database, online sources and reports from reputable sources. The paper is guided by articles of various authors profound in criminal justice system of India. News articles published by scholars focusing on the potential positives and negatives of the Act for the study. Various online open source, reports of reputed organizations and legal database was adopted for the collection of indexes. Additionally, to understand the difference between both the Acts the primary legal materials the statues was analyzed. The research adopted thematic synthesis approach with an aim of identifying gaps in existing regulatory framework to help policymakers, academicians and scholars of this growing field.

## **FINDINGS**

The new criminal law of India, Bharatiya Nyaya Sanhita, 2023 was enacted on 25<sup>th</sup> December 2023 and enforced on 1<sup>st</sup> July 2024. It replaced the Indian Penal Code of 1860, with an aim to get rid of the colonial legacy. The Indian Penal Code of 1860 was drafted by Thomas Babington Macaulay, the Chairman of first Law Commission of India, established in 1834. The Indian Penal Code was drafted solely to govern the people of India and was drafted with a comprehensive study of the complex Indian society. IPC was enacted on 6<sup>th</sup> October 1860 and came into force on 1<sup>st</sup> January 1862. From 1862 to 2024 it was amended more than 75 times to suit it with the evolution of society. Various provisions of the Act got amended for the progressive development of the society. Also, judiciary through its judgements struck down various provision that caught hold the progressive development of citizens and was against the interests of the individuals. For example, Section 377 of IPC was struck down in the case of Navtoj Sing Johar v. Union of India decriminalizing “consensual

homosexuality” recognizing the rights of LGBTQ+ community. Another example is the decriminalization of “Adultery” under section 497 of IPC which is read with section 198 of CrPC that allowed the Court to accept the complaint filed by the husband of the Women, in the case of Joseph Shine v. Union of India, since these sections make the wife the property of husband and is against the dignity of the women provided under Article 14, 19 and 21 of the Constitution.

Though these changes were added, the 21<sup>st</sup> century with its digital revolution led to a surge in various cybercrimes like cyber bullying, stalking, phishing, email hacking etc., requires for the addition of these crimes in the mainstream criminal legislation and necessitate a new Act comprehensive enough to address all the crimes.

The Government on India in 2023 set up a commission under the Chairmanship of Prof. Ranbir Sing, former vice Chancellor of the National Law University Delhi, to comprehensively review the old laws and provide necessary recommendation. The government claimed it a means to get rid of the colonial legacy of 3 criminal laws that serves to be the backbone of the Indian criminal justice system.

The provisions of the new Act, Bharatiya Nyaya Sanhita however did not render justice to the cause claimed by the government as there was no substantial, structural or fundamental changes. The Bharatiya Nyaya Sanhita (BNS) modifies 175 of 511 IPC provisions which amounts 34.24%<sup>4</sup>. But the changes made in these sections are mostly marginal.

While 22 sections are repealed only 8 were added. This addition amounts only 2.24% which means the real structural change is essentially meagre. Almost 65% of the Act remains unchanged with change only being in the numbering. this arises the validity of the questioning of Indianization. The IPC was itself drafted solely for the Indian land and the so called Indianization is not necessarily required and the government has abruptly failed in its attempt to decolonize the law as the new legislation contains most of the letters unchanged.

<sup>4</sup> <https://indianexpress.com/article/opinion/columns/new-criminal-codes-same-old-challenges-of-the-justice-system-9577694/#:~:text=One%20of%20the%20ambitious%20aspects,cope%20with%20the%20stringent%20timeline>

The Indianization was justified by giving the new Act the title as “Bharatiya Nyaya Sanhita”. This title being in Sanskrit, an Indian language is however against the directive given under Article 352 of Indian Constitution.

The colonial spirit of IPC lies under section 124A – “sedition”. This is renamed and rearranged in section 152 of BNS with the title “Act endangering the sovereignty, unity and integrity of nation. The section also adds the words “electronic or financial means” and “secession or armed rebellion or subversive activities, or encourages feelings of separatist activities or endangers sovereignty or unity and integrity of India; or indulges in or commits any such act”. The word “any such acts” provide excessive additional powers to the State as it provides discretion to the police to add any of the acts it deems fit under this section. The imprisonment is also increased from 3 years to 7 years. The colonial legacy cannot be abolished without the repealing of this section.

The section 113 of BNS titled “Terrorist Act” provides the same definition of “terrorist Act” provided under section 15 of The Unlawful Activities (Prevention) Act, 1967. This addition of the draconian law in the main stream provides wider scope to the police, and the arrest of citizen under this section make it seems general.

The section 226 of BNS penalises “Attempt to commit suicide to compel or restraint exercise of lawful power. It punishes such act with simple imprisonment for a term which may extend to 1 year or with fine or with community service. This restricts the people from protesting against the government. Those attempts are generally an expression of the grief of the people and the psychological element that caused them to act in such manner must be given consideration.

The Government intend in the new act to enhance “Justice” than “Punishment” which the government says in its justification for the word “Nyaya” in the title of the Act. The Act in order to enhance the reformatory principle of Indian Criminal Justice System adds “Community Service” in the list of Punishments under Section 4 (f). This is however not clearly defined and is left with the discretion of the Court of law. For example, Rashtriya

Swayamsevak Sangh being a cultural organisation the court may provide cleaning of its building as a punishment for a crime under Section 226 of the Act whereby a citizen attempts to suicide against a draconian legislation being enacted.

The Act also adds no gender neutrality in the offence of Rape under section 63, while the crime against men is increasing day by day and this penalization in an immediate need required for progressive development of society.

Also, the previously stuck down section 377 of IPC was not reframed and added in the new Act. This renders no justice for acts of bestiality.

The Act also causes inconsistency in the definition of Child provide under section 2(3). It defines Child as a person below the age of 18. The Act also has provision to punish a Child of the age 12 -16 for certain acts caused by them. The Act being a new legislation enacted after the case of Mukesh & Anr v. State for NCT of Delhi & Ors, would have provided certain comprehensive definition with clearly differentiation of people of the age group less than 12, 12-16 and 16-18.

The Act also lacks to implement the provisions for cybercrime and offences in virtual world. This is against the Government's aim of digital India. The legislation being a new Act the replaces IPC old precedents do not apply and the Judges cannot rely on precedents rather are required to create new judgements which cause delay in justice delivery. Delayed justice is denied justice and the enactment of new penal law in this time with judiciary already burdened with 3.81 crore pending case complicates the judicial landscape.

The progressive changes added in the Act is very limited and in the 2.24% of substantive change the major portion provides excessive power to the State.

## **LIMITATION**

The study is doctrinal research and lacks public opinion. The element of public opinion is

necessary to check the acceptance level of new legislation among public. Only then the real amount of decline the society feels about the law can be determined. People being an element of state and law being the force to govern them must be checked from that perspective.

## **CONCLUSION**

This shows that the government has essentially failed in its attempt to decolonize the Indian criminal law and has excessively enhanced its scope limiting civil liberties. These changes could have been brought in through an amendment than an Act. But, if all these changes are brought in through an Amendment Act, the Act would itself create issues as it prima facie shows that government enhancing its powers. This mere rebranding of IPC to BNS is a means of illusion the government creates to pull public support by inflating the public sentiment by means of adding the terms “Indianization and Decolonization”. The government has abruptly failed in its attempt to create a new Penal law and this is a progressive decline to the society as the excessive power to government allows them to excessively control people.

## 19. MOTOR VEHICLES ACT 2019: A STEP FORWARD OR A SPEED BUMP IN PUBLIC SAFETY

By

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### ABSTRACT

*India tops the list of nations with the greatest number of fatalities from traffic-related incidents. In India, traffic-related accidents rank sixth in terms of causes, with over seven million people suffering from fatalities, serious injuries, and minor collisions each year. The annual cost of traffic accidents in India stands at 2 percent of the GDP. This paper explores how the government's Motor Vehicles Act (2019) which takes a well-informed, multi-sectoral approach supported by a strong will to improve road safety and lower accident rates, will result in significant changes and explores how shifting public sentiments regarding safety, technological advancements, and urbanization are influencing the push for comprehensive reforms.*

**Keywords:** Road Safety, Accidents, Motor Vehicles Act (2019), Public Opinion, Traffic Regulations.

### INTRODUCTION

Since the rise in motor vehicles and the trend toward urbanization, there is more traffic on the roads, which raises the likelihood of accidents. As a result, the Motor Vehicle Act was passed and modified to govern every facet of road transportation vehicles. The Motor Vehicle Act of 1988 is thought of as a welfare law that provides assistance to people who have been hurt in any way or who have been involved in accidents. British

India's first central law governing the enforcement, registration, and licensing of automobiles was the Motor Vehicles Act of 1914. Later, in 1920 and 1924, it underwent modifications in a few princely states before the Indian Parliament passed the Motor Vehicle Act, 1988, which

regulated and controlled all road transportation. The following factors have influenced the enactment of the Motor Vehicle Act and its amendments: road and environmental health, road safety, vehicle fitness, compensation for victims of road accidents, protection of good Samaritans, mandatory insurance, national transportation policy, insurance facilities, motor vehicle accident fund, control of motor vehicles, registration and licensing of motor vehicles along with drivers, traffic regulation, offences, and penalties. On September 1, 2019, the Indian parliament passed the Motor Vehicles (Amendment) Act 2019, which strengthened the act's enforcement and maintained safer roads. Along with this amendment, the Central Government established a national road safety board to serve as an advisory body on all facets of traffic and road safety management. In contrast to most other countries, where people breaking traffic laws is a serious problem—such as crossing zebra crossings, displaying indicators, jumping traffic lines, and more—India's enforcement of the laws is extremely lax and behind schedule. '2+1' roads, pedestrian zones, and low speed limits are some of the measures that Sweden and France have put in place to curb overtaking and speeding. Germany employs a credit system to give traffic offenders demerit points, which could result in license revocation, whereas Japan has stringent laws and government-led awareness campaigns.

## **OBJECTIVES**

- I. To Understand the importance of this amendment.
- II. To Address the issues and features of the Motor Vehicle Amendment Act 2019.
- III. To analyze the awareness of the Motor Vehicle Act and its provision under the Act.
- IV. To identify gaps and challenges in the current provisions of the Motor Vehicles Act.
- V. To Understand whether this act addresses then changes in society and does it keep pace with it.

## REVIEW OF LITERATURE

- I. Ramesh Kumar's 2018 book, *Indian Road Safety<sup>1</sup>: An Analysis of Legal Framework*, explores the evolution of traffic laws in India, focusing on the 1988 Motor Vehicles Act and its socio-economic factors.
- II. Sudhir Bhatia's research on traffic safety<sup>2</sup> highlights the impact of enforcement, penalties, fines, and technology on public compliance and attitudes towards road safety.
- III. Alok Desai's book, *Public Opinion and Lawmaking in India<sup>3</sup>* (2015), examines how public opinion influences legislative processes, including the Motor Vehicles Act, and the government's enforcement of stricter laws.
- IV. Anita P. Roy's 2021<sup>4</sup> study compares global road safety regulations, highlighting best practices for India's Motor Vehicles Act, providing valuable insights for future road safety reforms.
- V. Vandana Mehta's book, *The Role of Education in Traffic Safety<sup>5</sup>* (2016), emphasizes the crucial role of education in shaping public attitudes towards road safety.

## METHODOLOGY

This study employs a doctrinal approach to analyze the Motor Vehicles Act, with particular attention to recent amendments and the legislative development of the act. In order to comprehend how public opinion has impacted legal reforms, it looks at primary legal sources, including statutes, case law, and government reports. In order to gauge public perceptions of traffic laws and road safety, the study also examines secondary sources, such as scholarly analyses and news reports. By analyzing these sources, the study draws attention to how public opinion and the law interact to shape regulatory changes. Legal analysis and the interpretation of the doctrinal implications of reform initiatives are given priority in the methodology.

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<sup>1</sup> Ramesh Kumar, *Indian Road Safety: An Analysis of Legal Framework* (2018).

<sup>2</sup> Sudhir Bhatia, *Traffic Safety and the Law: The Impact of Legal Reforms* (2020).

<sup>3</sup> Alok Desai, *Public Opinion and Lawmaking in India* (2015).

<sup>4</sup> Anita P. Roy, *Global Road Safety: Lessons from International Traffic Laws* (2021).

<sup>5</sup> Vandana Mehta, *The Role of Education in Traffic Safety* (2016).



## **MOTOR VEHICLES ACT-AN OVERVIEW**

The Indian Motor Vehicles Act, 1914 was the first central legislation in British India, giving local governments the power to register vehicles and require drivers to have a license. This Act had 18 sections and saw amendments in 1920 and 1924 in some princely states.

The Motor Vehicles Act, 1988 made vehicle registration and obtaining a driver's license necessary. It introduced a learner's license for anyone wanting to drive and required the use of an 'L' board and a licensed instructor when learning to drive. The Act also outlined rules for insurance, traffic regulations, penalties, and permit control.

Significant provisions include Section 177, detailing punishments for road safety offences, and Section 130, which requires drivers to produce their license and the vehicle's insurance and registration upon demand. It set the minimum age for driving at 20 years.

The Motor Vehicles (Amendment) Act of 2019 aimed to enhance road safety. It made the Aadhar card necessary for driving licenses and vehicle registrations. In cases of hit-and-run fatalities, the government will provide ₹2 lakhs in compensation. Guardians of juvenile offenders can be held accountable, and penalties for drunk driving were raised to ₹10,000. The Act mandates automated vehicle testing and permits the government to recall defective vehicles. It also creates a National Road Safety Board to advise on safety standards and technology and offers cashless treatment for accident victims.

The Act requires third-party insurance for two-wheelers, providing coverage for damages to others. Tata AIG offers both third-party and comprehensive bike insurance plans with customizable options and a wide network of garages for claims.

## **AMENDMENTS: LEGISLATIVE DEVELOPMENTS & THEIR IMPACT**

The Government of India passed the Motor Vehicles (Amendments) Bill, 2019 in Rajya Sabha<sup>6</sup> on July 31, 2019. Earlier, Lok Sabha<sup>7</sup> passed this bill on July 23, 2019. The changes proposed in the amended bill were aimed to help curb corruption, improve road safety, enhance rural transport system, upgrade public transport, encourage vehicle insurance adoption and introduce automation and several online services to accelerate. The Indian government has significantly tightened traffic rules with the implementation of the Motor Vehicles (Amendment) Act, 2019<sup>8</sup>. This act has introduced substantial hikes in penalties for various traffic offenses, aiming to deter reckless driving and improve road safety.

## **KEY TRAFFIC OFFENSES & PENALTIES**

### **Offenses Associated with Documents**

- a. Driving without a license carries a steep fine of Rs. 5,000 and a maximum sentence of three months in jail.
- b. Driving Without Insurance: Failure to have auto insurance carries a fine of Rs. 2,000 and a maximum sentence of three months in jail.
- c. Failure to carry a registration certificate: a 2,000 rupee fine.
- d. Juvenile Driving: The owner or guardian faces a harsh fine of Rs. 25,000 and a 3-year jail sentence.

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<sup>6</sup> Motor Vehicles (Amendment) Bill, 2019, Bill No. 310 of 2019, Rajya Sabha (July 31, 2019)

<sup>7</sup> Motor Vehicles (Amendment) Bill, 2019, Bill No. 310 of 2019, Lok Sabha (July 23, 2019)

<sup>8</sup> Motor Vehicles (Amendment) Act, No. 47 of 2019, India Code (2019)

### **Crimes Associated with Driving**

Driving While Intoxicated or Under the Influence of Drugs: A hefty Rs. 10,000 fine and possible jail time.

Careless and reckless driving carries a Rs. 5,000 fine.

Speeding: Depending on the seriousness of the infraction, a fine of Rs. 1,000 to Rs. 2,000 may be imposed.

Jumping Red Lights: A fine of between Rs. 1,000 and Rs. 5,000, along with possible jail time.

Failure to Wear a Helmet: A 1,000-rupee fine and a three-month license suspension.

Using a cell phone while operating a motor vehicle: a hefty Rs. 5,000 fine.

Vehicle Overloading: Depending on the kind of vehicle and the degree of overloading, a fine of Rs. 1000 to 2000.

### **Offenses Associated with Vehicles**

fine of Rs. 500 is imposed for driving without a valid pollution under control (PUC) certificate.

There is a 100 rupee fine for driving a car without a license plate.

There is a 500 rupee fine for operating a vehicle with improper lights or a horn.

### **Violations Associated with Parking**

a. 500 rupee fine and possible vehicle tow are imposed for parking in no-parking zones.

b. Improper Parking: A 100 rupee fine.



## **CHALLENGES IN IMPLEMENTING LEGAL REFORMS: LEGAL & SOCIAL BARRIERS**

Enforcement of traffic laws faces several difficulties. There is a lack of infrastructure, such as insufficient police personnel and outdated technology for monitoring road violations. Legal loopholes<sup>9</sup>, like inconsistencies in penalties, hinder the implementation of new laws. Coordination between different authorities, such as traffic police and transport offices, is also a challenge. Additionally, judicial delays<sup>10</sup> slow down legal processes and justice for road safety violations.

Social resistance<sup>11</sup> to legal reforms is another barrier. Cultural attitudes towards traffic violations, political lobbying from interest groups, and a lack of public awareness about new laws reduce their effectiveness. There is a tendency in society to ignore traffic rules, making it hard to gain support for stricter penalties.

Economic barriers include budget constraints that limit law enforcement and road safety campaigns. Stricter penalties may disproportionately impact lower-income groups<sup>12</sup>, leading to resistance against reforms.

Technological integration is challenged by limited access to technology in rural areas<sup>13</sup>, concerns over data privacy, and reliability issues with new systems. Finally, a weak road safety<sup>14</sup> culture is reflected in poor education on road safety, inconsistent enforcement across regions, and the involvement of unregistered transport service.

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<sup>9</sup> Brian K. Dugan, Legal Challenges in Traffic Law: Loopholes and Inconsistencies in Penalties, 88 YALE L.J. 550, 564 (2019).

<sup>10</sup> Mary L. Hollis, Judicial Delays and Their Impact on Road Safety Laws, 45 U. S.C. L. REV. 500, 510 (2020).

<sup>11</sup> Elaine M. Robbins, Public Awareness and Resistance to Traffic Law Reforms, 67 SOC. ISSUES J. 415, 423 (2021).

<sup>12</sup> "Economic Constraints in Road Safety: A Case for Reforms," 12 Indian Economic Review 233 (2020)

<sup>13</sup> Kelsey B. Williams, Bridging the Digital Divide in Traffic Enforcement: Access to Technology in Rural Areas, 19 TECH. POL'Y Q. 211, 219 (2020).

<sup>14</sup> Charles M. King, Road Safety and the Role of Unregistered Transport Services, 38 J. SAFETY POL. 202, 210 (2023).

## A CRITICAL ANALYSIS ON MOTOR VEHICLES (AMENDMENT) ACT 2019

Responses to the Motor Vehicles (Amendment) Act 2019 have been mixed, ranging from support to reservations about its execution. The hefty fines for minor traffic infractions like failing to wear a seatbelt, forgetting paperwork, or failing to wear a helmet are a major topic of discussion. According to a report by the Hindu<sup>15</sup> claims that these fines have drawn criticism for being out of proportion to the seriousness of the infractions, raising concerns about their ability to actually increase traffic safety. Other sources, however, contend that these steep fines are necessary to discourage risky actions like running red lights and driving carelessly, which put lives in jeopardy, especially those of families impacted by traffic accidents. Although there are still worries about corruption in the traffic police, the increase in fines has been attributed to a cultural shift away from breaking the law and toward law-abiding behavior. It is argued that in a society where rules were frequently disregarded, the threat of punishment acts as a tool to restore order. Additionally, some have proposed that infractions like failing to drive in designated lanes should also result in fines, highlighting the fact that those who obey the law should not be penalized.

Although it is acknowledged that the law aims to increase road safety, there are other issues with its implementation. According to a Times of India report<sup>16</sup>, more than 90% of cars in Jaipur obeyed speed limits, indicating that the law was having a beneficial effect. However, detractors argue that rather than improving road safety, the hefty fines might be a way for the government to make money. In light of the current backlog at RTO offices, these critics have also demanded a grace period for citizens to abide by the law. The effectiveness of fines in preventing traffic accidents is further undermined by the perception that poor road conditions and flawed road designs are contributing factors. However, proponents of the law contend that the higher fines have contributed to a decrease in road crime and that law-abiding

<sup>15</sup> The Motor Vehicles (Amendment) Act, No. 47 of 2019, § 3, India Code (2019).

<sup>16</sup> Jaipur Traveler's Report on Speed Limit Compliance, Times of India, Jan. 10, 2020.

citizens shouldn't worry about facing consequences. The implementation of camera-based enforcement systems is also well-supported since it is anticipated that they will enhance the prosecution of traffic infractions and lessen corruption.

According to India Today report<sup>17</sup> experts contend that tougher punishments for moving violations could discourage both first-time and repeat offenders, which would lower the number of traffic accidents overall, according to India Today. The Economic Times also pointed out that since the law's passage, people's awareness of road safety has grown, and many are now more inclined to follow safety regulations like wearing seatbelts and helmets.

## CONCLUSION

Stricter penalties have been added to the Motor Vehicles Act in an effort to increase road safety and lower the number of traffic fatalities. The goal is to deter risky driving practices like drunk driving and speeding. The goal of the reforms is to promote legal compliance and save lives. There has been a mixed reaction from the public to these changes. Many people feel that tougher penalties can result in better behavior and support the law's ability to discourage careless driving. Positive changes, like more drivers adhering to speed limits, demonstrate that when law enforcement is consistent, public opinion can change to reflect legal reforms. The fairness of the new fines, particularly for minor infractions, has drawn some criticism. High fines can unfairly impact regular drivers and seem excessive. The viability of these reforms is also called into question by problems like inadequate infrastructure and ineffective administration. Acceptance of harsher punishments is further complicated by cultural attitudes regarding breaking the law.

Effective public awareness, improved administration, and enhanced law enforcement are all necessary for the Act to succeed. Support from the general public may increase as they start to perceive the advantages, such as fewer accidents. Addressing cultural issues and ensuring

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<sup>17</sup> Public Opinion on Road Safety and Traffic Penalties, The Hindu, Nov. 15, 2020.

equitable enforcement depend on the government and citizens developing trust. In the end, cooperation is required if these laws are to be adopted for safer roads.

The Motor Vehicle Act ensures that everyone in India can protect themselves from accidents and avoid traffic jams. It applies to all citizens, and not following this law can lead to fines. The Act aims to protect not just drivers and car owners, but also regular road users. Citizens are expected to follow the laws for their safety and the safety of others. If an accident occurs due to negligence, victims and their families may claim compensation. This article emphasizes how important it is that everyone should abide by the Act's regulations.

## SUGGESTIONS

The government should use AI-driven systems for real-time traffic violation detection to increase enforcement efficiency and implement a phased approach to fines to give the public time to adjust. Prioritizing road safety initiatives in rural and remote areas, where risks may be higher, is crucial, as is improving driver's license exams to ensure better skill assessment. Traffic laws will be implemented more successfully if law enforcement and local authorities work together more closely. Road safety education in school curricula will help establish positive habits from a young age, and providing insurance incentives to drivers who obey traffic laws can also promote responsible behavior.

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## 20. ORGANIZED CRIME UNDER BHARATHIYA NYAYA SANHITA

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### Abstract

*A crime is an act or omission that constitutes an offense against the laws of a country or state, and is punishable by law. Key Elements of a Crime: Actus Reus, Men's Rea, Causation, Legality. Different Types of Crimes Felony, Misdemeanor, White-Collar Crime. Basic Characteristics of a Crime: Harm: Crimes cause harm or injury to another person or property. Punishment: Crimes are punishable by law. Moral Wrong: Crimes are considered morally wrong. Social Condemnation: Crimes are condemned by society. Organized crime refers to any crime committed by a group of three or more persons, acting in concert, with the objective of achieving financial or other material benefits, or of gaining power or control over others. The purposes of organized crime under the BNS include Financial Gain, Power or Control, Intimidation or Coercion, Economic Dominance. The objectives of organized crime laws under the BNS include Prevention, Investigation, Prosecution, and Protection. There are three different categories of organized crimes under Bharathiya Nyaya Sanhita. The Bharathiya Nyaya (Second) Sanhita, 2023 (BNS2) introduces several new offences, Here are some of them Terrorism Organized Crime Petty Organized Crime Endangering Sovereignty, Unity, and Integrity of India.*

**Keywords:** *organized crimes, offences by a group, intimidation, coercion, financial gain.*

### 1. Introduction:

The Bharathiya Nyaya Sanhita (BNS) is a proposed Indian law that aims to consolidate and various laws related to crime and punishments. The Bharathiya Nyaya Sanhita is a criminal act which replaces the existing Indian Penal Code (IPC) 1860. BNS passed in the year of 2023 of December 25<sup>th</sup> as the Act no 45 of 2023. BNS enacted by the parliament in the

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seventy-fourth year of Republic India. The BNS has introduced remarkable changes in criminal justice system. It holds the place and performing the functions of the IPC (previous criminal law) which is in operation for the past sixty- five years. On comparing with IPC, BNS steps forward in its development in certain provisions relating to community service, introduction of newer offences relating to change in the society and also changing or providing server punishments based on the effect of that offences. The BNS focused on various categories of crimes such as offences against body, offences against women, sedition, terrorism, organized crimes and mob lynching. The main objective of BNS is to simplify and consolidate laws related to crime and punishment into a single code; to promote justice and fairness further ensuring equality for all citizens and to protect human rights of all citizens, including rights of victim and accused person. The ultimate benefits of BNS are simplification of provisions on crime and punishments; reduces burden on courts and improves efficiency of the justice system and better protection and compensation for victims. Bharatiya Nyaya Sanhita is a criminal Act contains 358 sections within 20 chapters. This criminal law consists of application of the Act; offences and punishments for such offences. BNS distinguish all the social evils of the society into various classes of offences. They are offences against human body, state, women, offences relating to army, navy, air force, documents, justice religion and society.

### **1.1. Elements of crime and the stages involved in a criminal act:**

Crime is the act or omission which causes injury to the any person or property in another words crime is an act or omissions that constitutes offences against the laws of a country or state and is punishable by law. The Latin maxim which shows the fundamental element for a crime through the maxim “actus non facit reum nisi mens sit rea”. That shows simply the thinking about doing the crime is not a criminal act; it also includes physical act. The different key elements for constituting crime are:

**Actus Reus:** the guilty act or omission that constitutes crime (physical element).

**Mens Rea:** the guilty mind or intention to commit crime (mental element).

**Causation:** the act or omission must cause harm or injury to another person or property( resultant).

**Legality:** the act or omission prohibited by law (Violation of Laws of the land).

On regarding the stages of crime, there are four stages of crime they are intention, preparation, attempt and accomplishment. Stages of crime is also the basic criteria in determining the punishments for an offence. Some crimes are punished at the preparation stage. Quantitative measure of the punishments and its frequency based on the attempt and accomplishment of a criminal act.

**Organized crimes:**

Organized crime is the illegal act done by the structured group of members associated or systematized themselves or by a hierarchy for achieve monetary benefit or power either directly or indirectly. The group engaged in any illegal activities continuously or frequently to get the financial gain. Some crimes done by the organized groups are Kidnapping, contract killing, Extortion, Robbery, economic offences, vehicle theft, cybercrimes, land grabbing, trafficking, etc., this systematized group is controlled by the head or by another organized group as their leaders. They engaged in organized crime for a longer period and this turn to be their daily routine. To prevent these organized crimes the states of Maharashtra and Gujarat in India had already taken the steps through their legislative by passing the legislations. They are Maharashtra Control of Organized crimes Act 1999 and Gujarat Control of Terrorism and Organized crime Act 2015 by Maharashtra and Gujarat respectively.

**2.1. Need for curtail Organized Crime:**

Indian Penal Code does not contain the separate provisions for Organized Crime. Now in recent days the growth and development of large number of gang or groups continuing the illegal acts is steeply increasing. This is very much harmful to the society and in turn cause the negative impact in the society and also endangering the human values. Hence it becomes the duty of the state to curb tis organized crimes and prevent the organized crime groups to continue any illegal act through the illegal means. The group committing such illegal act by illegal means for obtaining financial gain called Organized crime or syndicate group. It is an organization within a criminal society.

Law is the outcome of the social needs. Henceforth due to the necessity state inserted organized crime in Bharathiya Nyaya Sanhita. The constitution of India also provides the power to the central and state government to enact laws to maintain law and order in the society and protect the people from social evils. The main reasons for inserting this Organized crime are social change, social need, prevent furtherance of offences, maintain economic stability and providing protection to society.

Constitution of India 1950 guaranteed the right to life under article 21<sup>2</sup>. But this criminal act by the organized persons was the offences which cause threat to lead a peaceful life of human and also it was a major evil in the society negatively affects the law and order of the society.

## **2.2. Organized crime under BNS:**

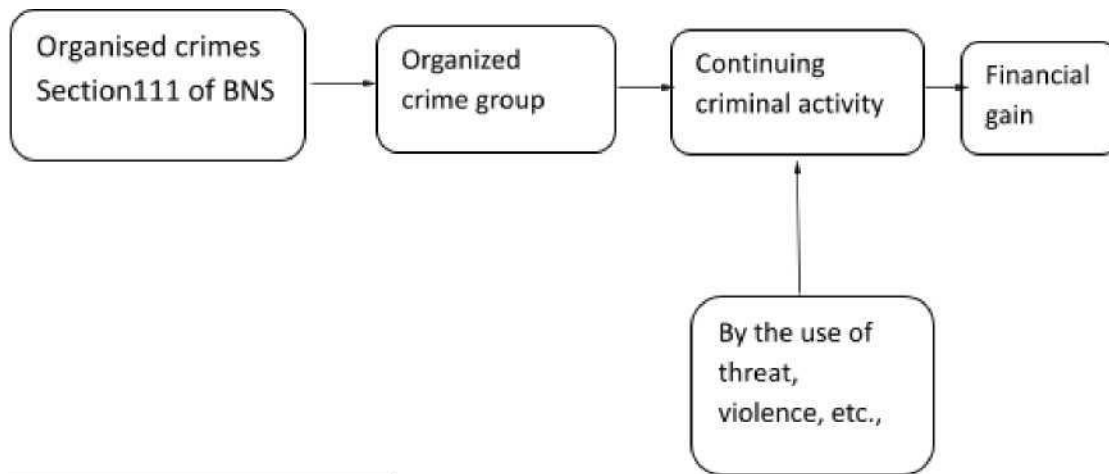
Organized crime refers to a network of individuals and group engaged in illegal act, often for financial gain and characterized by a hierarchical structure, division of labor and use of violence or intimidation. In BNS organized crimes and petty organized crimes are given space under provisions 111 and 112 of chapter 6<sup>3</sup>. Organized crime and petty organized crimes are categorized under offences against human body particularly under offences affecting life of persons. Organized crimes actually include offences against human body, offences against state, offences against property. The BNS focused on various categories of crimes such as offences against body, offences against women, sedition, terrorism, organized crimes and mob lynching. Among all these criminal act, organized crimes refer to any crime committed by a group of three or more persons, acting in concert, with the objective of achieving financial or other material benefits, or of gaining power or control over others.

Subclause 1 of section 111 of Bharathiya Nyaya Sanhita deals about the Organised Crimes and subclause 2 to subclause 7 of section 111 of Bharathiya Nyaya Sanhita deals with the punishment for such offences.

“organized crime is any unlawful act or offences committed by a group of persons jointly for getting benefit out of the crime. The benefit acquiring may be either direct or indirect financial gain or material gain. The organized members conjointly doing the illegal act by the use of threat, violence or intimidation to get the financial assistance out of the act done.”



**Chart 1. Organized crime section 111 under BNS**



<sup>3</sup> The Bharatiya Nyaya Sanhita 2013

**2.3. BNS categorizes Organized crimes into three categories:**

Organized crimes under section 111 of BNS provides the inclusive provision in a manner to add any unlawful act done by a systematized gang and continuing such offences for the monetary benefit through the use of fear or intimidation or any unlawful means. Some of organized crimes were listed in the BNS can be classified as Transnational Organized crimes and Domestic Organized crimes. The classification of organized crimes based on the subject matter on which the organized crime creating negative impact is as follows:

**Serious organized crimes against human body (ex. kidnapping)**

The offences under organized crimes affects the victim with severely affecting their life can be categorized as under serious organized crimes. It also includes trafficking of persons, contract killing, human trafficking for prostitution and ransom.

**Organized crime against property (ex. robbery)**

The offences which causing damage to the property of the victim to the greater extent can be categorized under organized crime against property. It also vehicle theft, land grabbing and extortion.

### **Organized crime against public order (ex. trafficking)**

The offences which causing adverse effects on the society to the greater extent can be categorized under organized crime against public order. It destroys the public life negatively affect the law and order of the society. It includes economic offences, cyber-crime, trafficking of drugs, weapons, illicit goods and services.

#### **2.4. Stages of Organized crime:**

Usually organized crime such as trafficking, contract killing involves group of persons guided by the head of the group or done by the group conjointly in different stages of crime. On regarding the stages of crime, there are four stages of crime Indian Penal Code; they are intention, preparation, attempt and accomplishment as stated before. Stages of crime is also the basic criteria in determining the punishments for an offence.

- 1) There are four different stages of organized crime
- 2) Organized group of persons organized to commit a crime
- 3) Continuing those illegal act
- 4) Use of threat, violence or any unlawful means to acquire benefit from victim
- 5) Share the financial gain or material benefit between the group of members

The above four are the basic stages of an organized crime. These stages are utilized in determining the punishment for those offences.

#### **2.5. List of crimes:**

Section 111 of Bharathiya Nyaya Sanhita derives a list of crimes if it performed by a syndicate group through unlawful means for obtaining benefit. The list contains ten various offences as follows kidnapping, contract killing extortion, robbery, economic offences, vehicle theft, cyber-crimes, land grabbing, trafficking (human, drugs, weapons, illicit goods and services) and trafficking for ransoms and prostitution.

#### **Economic Offences:**

Under section 111 of BNS individual explanation given for the economic offences. These offences affect the economic status of the state. It includes 1) offences relating to currency and coinage, 2) criminal breach of trust 3) any act to defraud the financial institution to obtain monetary benefits in any form.

## **2.6. Punishments for Organized crimes under BNS:**

Every unlawful act by a single person or group of persons or by the gang should be punishable by law to maintain law & order and peace in the society. Thus, in order to create the safer society to human life this is very much essential to curb the organized crimes completely from the society. Thus, the punishments provided under this BNS based on the deterrent theory and preventive theory whereas former is to create fear of punishment in doing the offences and the latter is to take the preventive measures to another people in the society to repeat the same hereafter. The punishment includes deterrent effect because impact of these organized crimes is more severe than it done by a single person. The organized crime affects the society in proportionately as the members engaged in the criminal act continuously. In this organized crime more, persons acting against law which in turn affects the future generation in greater values. Organized crimes are endangering human life and economic status of the state to its greater extent. Thus, BNS also contains provisions for punishing the persons helping knowingly or unknowingly to the syndicate member or to members engaged in crime.

In punishing the persons under organized crimes depends on the level of their interference in commission of crime; resultant or effect out of the crime or loss incurred or defect caused to property, human life, state; benefit obtained out of organized crime. The major punishments involved in this section are death punishment, life imprisonment and fine.

### **Section 111 (2) of BNS:**

If the organized crime results in death of victim, then they will be punished with death sentence or to life imprisonment and fine payable not less than 10 lakhs under this section.

In other effects, punishment extend to life imprisonment and fine not less than 5 lakhs under this section.

### **Section 111(3) of BNS:**

If the person engaged in abetment or attempt in crime they will be punished with imprisonment for a period not less than 5 years or it may extend to life imprisonment and fine not less than 5 lakhs under this section.

**Section 111(4) of BNS:**

If the member syndicate in this crime, then they will be punished with imprisonment for a period not less than 5 years or it may extend to life imprisonment and fine payable not less than 5 lakhs under this section.

**Section 111(5) of BNS:**

If a person intentionally harboring the member of organized crime will be punished under this section with the imprisonment not less than 3 years or it may be extend to life imprisonment and fine payable not less than 5 lakhs.

**Section 111(6) of BNS:**

If the person possessing the property gained out of the organized crime shall be punished with imprisonment not less than 3 years or life imprisonment and fine payable not less than 2 lakhs under this section.

**Section 111(7) of BNS:**

If the person on behalf of the member of the organized crime possessing the property gained out of the unlawful act shall be punished with imprisonment not less than 3 year but it may extend to 10 years and fine payable not less than one lakhs under this section.

**2.7. Factors and reasons responsible for Organized crime:**

Factors which strengthens the Organized crime are number of members level of organization, skill and expertise, resources and funding, leadership and motivation. Crime by single persons differs from the organization from the level of planning, violence, accountability and

impact of victims. Main reasons for Organized crime economic factors such as poverty, unemployment, inequality; social factors such as social exclusion, family & community ties, lack of education & opportunities; political factors such as corruption, lack of effective law enforcement, political instability; psychological factors such as desire for power and status, thrill-seeking, lack of empathy.

### **Reason for Organised crime:**

Organized crime refers to a network of individuals and groups engaged in illicit activities, often for financial gain. Some reasons that contribute to the existence and proliferation of organized crime includes.

#### **1. Economic Factors**

**Poverty:** Economic deprivation can drive individuals to engage in illicit activities.

**Unemployment:** Lack of job opportunities can lead to involvement in organized crime.

**Inequality:** Economic inequality can create an environment conducive to organized crime.

#### **2. Social Factors**

**Social Exclusion:** Marginalization and exclusion from mainstream society can lead to involvement in organized crime.

**Family and Community Ties:** Strong family and community ties can facilitate involvement in organized crime.

**Lack of Education and Opportunities:** Limited access to education and opportunities can contribute to involvement in organized crime.

#### **3. Political Factors**

**Corruption:** Corruption and weak governance can create an environment conducive to organized crime.

**Lack of Effective Law Enforcement:** Inadequate law enforcement can enable organized

crime to flourish.

**Political Instability:** Political instability and conflict can create opportunities for organize Empathy.

#### 4. Psychological Factors

**Desire for Power and Status:** The desire for power, status, and prestige can drive individuals to engage in organized crime.

**Thrill-Seeking:** Some individuals may engage in organized crime for the thrill and excitement.

**Lack of Empathy:** A lack of empathy and moral values can facilitate involvement in organized crime.

#### Some Organised crimes:

**Kidnapping** is a serious crime that involves the unlawful seizure, transportation, and detention of a person against their will. Here are some key aspects of kidnapping. Kidnapping is defined as the act of taking away a person against their will, usually to demand ransom, commit extortion, or engage in other illegal activities.

#### Types of Kidnapping

**Simple Kidnapping:** The act of taking away a person against their will, without any intention to demand ransom or commit extortion.

**Kidnapping for Ransom:** The act of taking away a person against their will, with the intention to demand ransom or commit extortion.

**Robbery** is a serious crime that involves the unauthorized taking of property from a person, using force or intimidation. Robbery is defined as the act of taking or attempting to take property from a person, using force or intimidation.

**Unauthorized Taking:** The taking of property without the owner's consent.

**Force or Intimidation:** The use of physical force, threats, or intimidation to take or attempt to take property.

**Property:** Any movable property, such as money, jewelry, or other valuables.

### **Types of Robbery:**

**Highway Robbery:** Robbery committed on a public highway or road.

**Train Robbery:** Robbery committed on a train or railway premises.

**Bank Robbery:** Robbery committed in a bank or financial institution.

**Armed Robbery:** Robbery committed using a deadly weapon.

### **Prevention:**

**Awareness:** Public awareness campaigns can help prevent robbery by educating people on how to protect themselves and their property.

**Security Measures:** Implementing security measures such as CCTV cameras, alarms, and secure locks can help prevent robbery.

**Community Policing:** Community policing initiatives can help build trust between law enforcement and the community, leading to a reduction in robbery incidents.

**Vehicle theft** is a serious crime that involves the unauthorized taking of a vehicle, such as a car, truck, or motorcycle. Vehicle theft is defined as the act of taking or attempting to take a vehicle without the owner's consent.

**Unauthorized Takin:** The taking of a vehicle without the owner's consent.

**Vehicle:** Any motor vehicle, including cars, trucks, motorcycles, and other types of vehicles.

**Intent to Steal:** The intention to permanently deprive the owner of the vehicle.

### **Types of Vehicle Theft:**

**Grand Theft Auto:** The theft of a high-value vehicle, such as a luxury car.

**Petty Theft:** The theft of a low-value vehicle, such as a motorcycle.

**Carjacking:** The theft of a vehicle by force or intimidation.

**Prevention:**

**Vehicle Security Systems:** Installing vehicle security systems, such as alarms and immobilizers, can help prevent vehicle theft.

**Parking in Secure Locations:** Parking vehicles in secure locations, such as designated parking lots with CCTV cameras, can help prevent vehicle theft.

**Not Leaving Valuables in Vehicles:** Not leaving valuables, such as purses or laptops, in vehicles can help prevent vehicle theft.

**Human trafficking for ransom** is a serious human rights violation that involves the recruitment, transportation, transfer, harboring, or receipt of persons, using threat, force, coercion, abduction, fraud, deception, or abuse of power for the purpose of demanding ransom or other forms of compensation.

**Prevention:**

**Awareness:** Public awareness campaigns can help prevent human trafficking for ransom by educating people on the risks and consequences.

**Community Engagement:** Community engagement and participation can help prevent human trafficking for ransom by providing support and protection to vulnerable individuals.

**Support Services:** Providing support services, such as counseling and rehabilitation, can help victims of human trafficking for ransom recover and reintegrate into society.

**Signs of Human Trafficking for Ransom:**

**Unusual or excessive control:** Victims may be accompanied by someone who seems to be in control.

**Fear or anxiety:** Victims may appear fearful, anxious, or depressed.

**Unusual or inconsistent stories:** Victims may provide inconsistent or suspicious stories about their situation.

**Poor living conditions:** Victims may be living in poor or overcrowded conditions.

**Lack of personal belongings:** Victims may not have access to their personal belongings or identification documents.

**Human trafficking for prostitution** is a serious human rights violation that involves the recruitment, transportation, transfer, harboring, or receipt of persons, using threat, force, coercion, abduction, fraud, deception, or abuse of power for the purpose of commercial sexual exploitation.

### **Prevention:**

**Awareness:** Public awareness campaigns can help prevent human trafficking for prostitution by educating people on the risks and consequences.

**Community Engagement:** Community engagement and participation can help prevent human trafficking for prostitution by providing support and protection to vulnerable individuals.

**Support Service:** Providing support services, such as counseling and rehabilitation, can help victims of human trafficking for prostitution recover and reintegrate into society.

### **Signs of Human Trafficking for Prostitution:**

**Unusual or excessive control:** Victims may be accompanied by someone who seems to be in control.

**Fear or anxiety:** Victims may appear fearful, anxious, or depressed.

**Unusual or inconsistent stories:** Victims may provide inconsistent or suspicious stories about their situation.

**Poor living conditions:** Victims may be living in poor or overcrowded conditions.

**Lack of personal belongings:** Victims may not have access to their personal belongings or identification documents.

**Extortion** is a serious crime that involves obtaining something, especially money, through force or threats. Extortion is defined as the act of obtaining or attempting to obtain property or valuable security from a person by threatening to cause harm or injury to that person or their property.

**Threat:** The threat to cause harm or injury to a person or their property.

**Property or Valuable Security:** The obtaining or attempting to obtain property or valuable security from a person.

**Intent to Extort:** The intention to obtain property or valuable security from a person through threats.

### **Types of Extortion:**

**Physical Extortion:** The use of physical force or violence to extort property or valuable security.

**Psychological Extortion:** The use of threats or intimidation to extort property or valuable security.

**Cyber Extortion:** The use of technology, such as hacking or malware, to extort property or valuable security.

### **Prevention:**

**Awareness:** Public awareness campaigns can help prevent extortion by educating people on how to recognize and report extortion attempts.

**Security Measure:** Implementing security measures, such as CCTV cameras and alarms, can help prevent extortion.

**Reporting Extortion Attempts:** Reporting extortion attempts to the authorities can help prevent further extortion attempts.

**Land grabbing** is a serious crime that involves the unauthorized occupation or possession of land belonging to others. Land grabbing is defined as the act of taking or attempting to take possession of land belonging to another person without their consent.

**Unauthorized Occupation:** The unauthorized occupation or possession of land belonging to others.

**Land:** Any immovable property, including agricultural land, residential land, or commercial land.

**Intent to Grab:** The intention to take or attempt to take possession of land belonging to another person without their consent.

### **Types of Land Grabbing:**

**Physical Land Grabbing:** The physical occupation of land belonging to others.

**Documentary Land Grabbing:** The creation of forged documents to claim ownership of land belonging to others.

**Influential Land Grabbing:** The use of influence or power to take possession of land belonging to others.

### **Prevention:**

**Awareness:** Public awareness campaigns can help prevent land grabbing by educating people on how to recognize and report land grabbing attempts.

**Secure Land Records:** Maintaining secure land records can help prevent land grabbing by ensuring that land ownership is accurately recorded.

**Reporting Land Grabbing Attempts:** Reporting land grabbing attempts to the authorities can help prevent further land grabbing attempts.

**Contract killing**, also known as murder-for-hire, is a serious crime where one person hires another to commit murder. Contract killing is defined as the act of murdering a person in exchange for money or other forms of compensation.

**Murder:** The intentional killing of a human being.

**Contract:** An agreement between two or more persons to commit murder in exchange for money or other forms of compensation.

**Intent to Kill:** The intention to kill the victim.

### **Types of Contract Killing:**

**Direct Contract Killing:** A person directly hires another to commit murder.

**Indirect Contract Killing:** A person hires an intermediary to hire someone to commit murder.

### **Prevention:**

**Awareness:** Public awareness campaigns can help prevent contract killing by educating people on how to recognize and report suspicious activities.

**Intelligence Gathering:** Law enforcement agencies can gather intelligence to identify potential contract killers and prevent murders.

**Protection of Witnesses:** Protecting witnesses and informants can help prevent contract killing by preventing retaliation against those who provide information.

**Economic offenses** refer to crimes that involve financial or economic harm to individuals, businesses, or the state.

### **Types of Economic Offenses:**

**Money Laundering:** The process of concealing the origin of illegally obtained funds to make them appear legitimate.

**Fraud:** The use of deceit or misrepresentation to obtain financial gain.

**Embezzlement:** The theft or misappropriation of funds or assets by a person in a position of trust.

**Bribery:** The offering or receiving of something of value in exchange for influence or favor.

**Tax Evasion:** The intentional avoidance of paying taxes owed to the government.

**Counterfeiting:** The creation or distribution of fake currency or goods.

**Insider Trading:** The buying or selling of securities based on confidential information.

**Illicit goods and services** refer to products or activities that are illegal, unauthorized, or prohibited by law.

### **Types of Illicit Goods:**

**Counterfeit Products:** Fake or imitation products, such as luxury goods, currency, or documents.

**Smuggled Goods:** Goods that are imported or exported without paying duties or taxes.

**Stolen Goods:** Goods that are stolen from individuals, businesses, or institutions.

### **Types of Illicit Services:**

**Prostitution:** The provision of sexual services in exchange for money or other forms of compensation.

**Human Trafficking:** The recruitment, transportation, transfer, harboring, or receipt of persons for the purpose of exploitation.

**Money Laundering:** The process of concealing the origin of illegally obtained funds to make them appear legitimate.

**Prevention:**

**Awareness:** Public awareness campaigns can help prevent illicit goods and services by educating people on the risks and consequences.

**Regulation:** Effective regulation and enforcement can help prevent illicit goods and services by disrupting supply chains and prosecuting offenders.

**International Cooperation:** International cooperation and information sharing can help prevent illicit goods and services by identifying and disrupting global trafficking networks.

**Cybercrime** refers to any criminal activity that involves the use of computers, the internet, or other digital technologies.

**Types of Cybercrime:**

**Hacking:** Unauthorized access to computer systems or networks.

**Phishing:** Using fake emails, texts, or messages to trick people into revealing sensitive information.

**Identity Theft:** Stealing personal information to impersonate someone else.

**Online Harassment:** Using digital technologies to bully, threaten, or intimidate others.

**Cyberstalking:** Using digital technologies to track or monitor someone's online activities.

**Ransomware:** Malicious software that demands payment in exchange for restoring access to

data.

**Cyber Espionage:** Unauthorized access to computer systems or networks to steal sensitive information.

**Prevention:**

**Use Strong Passwords:** Use unique and complex passwords for all online accounts.

**Keep Software Up-to-Date:** Regularly update operating systems, browsers, and other software to patch security vulnerabilities.

**Be Cautious with Emails and Links:** Avoid clicking on suspicious links or opening attachments from unknown senders.

**Use Antivirus Software:** Install and regularly update antivirus software to protect against malware.

**Monitor Online Account:** Regularly monitor online accounts for suspicious activity.

**Trafficking of weapons** refers to the illicit manufacture, sale, transfer, possession, or use of firearms, explosives, or other weapon.

**Types of Weapons Trafficking:**

**Small Arms Trafficking:** The illicit trade in small arms, such as handguns, rifles, and shotguns.

**Light Weapons Trafficking:** The illicit trade in light weapons, such as machine guns, mortars, and rocket-propelled grenades.

**Heavy Weapons Trafficking:** The illicit trade in heavy weapons, such as tanks, artillery, and missile systems.

**Laws Related to Weapons Trafficking:**

- 1) Arms Act, 1959: A law that regulates the manufacture, sale, transfer, possession, and

use of firearms and ammunition.

- 2) Explosives Act, 1884: A law that regulates the manufacture, sale, transfer, possession, and use of explosives.
- 3) United Nations Convention against Transnational Organized Crime (UNTOC): An international treaty that aims to combat transnational organized crime, including weapons trafficking.

### **Prevention:**

**Regulation of Firearms:** Strict regulation of firearms, including licensing and registration, can help prevent weapons trafficking.

**Border Control:** Effective border control can help prevent the smuggling of weapons across international borders.

**International Cooperation:** International cooperation and information sharing can help prevent weapons trafficking by identifying and disrupting trafficking networks.

**Trafficking of persons** is a serious human rights violation that involves the recruitment, transportation, transfer, harboring, or receipt of persons, using threat, force, coercion, abduction, fraud, deception, or abuse of power for the purpose of exploitation.

### **Types of Trafficking:**

**Sex Trafficking:** The recruitment, transportation, transfer, harboring, or receipt of persons for the purpose of commercial sexual exploitation.

**Labor Trafficking:** The recruitment, transportation, transfer, harboring, or receipt of persons for the purpose of forced labor or services.

**Organ Trafficking:** The removal of organs from a person without their consent, or the sale of organs by a person who is not in a position to give informed consent.

**Child Trafficking:** The recruitment, transportation, transfer, harboring, or receipt of children for the purpose of exploitation.

**Laws Related to Trafficking:**

- 1) The Immoral Traffic (Prevention) Act, 1956: A law that aims to prevent and combat trafficking for commercial sexual exploitation.
- 2) The Bonded Labour System (Abolition) Act, 1976: A law that aims to abolish the bonded labor system and prevent forced labor.
- 3) The Juvenile Justice (Care and Protection of Children) Act, 2015: A law that aims to provide care and protection to children who are victims of trafficking.

**Prevention:**

**Awareness:** Public awareness campaigns can help prevent trafficking by educating people on how to recognize and report trafficking cases.

**Community Engagement:** Community engagement and participation can help prevent trafficking by providing support and protection to vulnerable individuals.

**Support Services:** Providing support services, such as counseling and rehabilitation, can help victims of trafficking recover and reintegrate into society.

Trafficking of drugs refers to the illegal production, distribution, and possession of controlled substances, such as narcotics, psychotropic substances, and other prohibited drugs. Types of :

**Drug Trafficking:**

**Production and Manufacture:** The production and manufacture of controlled substances, such as opium, cocaine, and heroin.

**Possession and Sale:** The possession and sale of controlled substances, including small quantities for personal use.

**Transportation and Distribution:** The transportation and distribution of controlled substances, including across international borders.

**Prevention:**

**Awareness:** Public awareness campaigns can help prevent drug trafficking by educating people on the risks and consequences of drug abuse.

**Community Engagement:** Community engagement and participation can help prevent drug trafficking by providing support and protection to vulnerable individuals.

**Law Enforcement:** Effective law enforcement and border control can help prevent drug trafficking by disrupting supply chains and prosecuting offenders.

**2.8. Characteristic features of organized crimes:**

Organized crimes under BNS are having following characteristics features. They are

(a) Conspirational crime:

Organized crime is Conspirational in nature since it is a preplanned illegal act by illegal means for money done by a systematized group of members.

(b) For acquiring Economic gain.

The ultimate goal of committing the organized crime by the organized group is to gain financial benefit or power out of it.

(c) Includes illegal act by the organization

Organized group done an illegal act such as kidnapping, vehicle theft, trafficking or any illegal act (act which is prohibited by law)

(d) Execution involves intimidation, violence

Commission of organized crime involves the unlawful means such as threat, force,

intimidation, etc.,

(e) Hierarchical structure to control all the members at different levels

The organized crime group even having different categories of workers to carry out the different crimes as their daily routine but having control through supervisors.

(f) Motivating themselves by the profits

Financial gain out of that crime is the base for motivating their groups to be stable in the group to do an illegal act

(g) Continuing the criminal act

The criminal activity carried on by the organized group will be their daily routine of employment and continuing for longer period.

(h) Team work and division of labors strengthen them in commission of crime Team work with cooperation is basic strength of the organized crime group to carry out these unlawful acts without any disturbance from the state actions.

(i) Linked via the organized crime group either in National or international network These organized crime groups can become network when they are interconnected. It can be interconnected across the border to commit a transnational crime.

### **2.9. Drawback in elimination of Organized crimes from the society:**

the main drawbacks in implementing the punishments of such organized crime committed by the persons is that it is not easier to find the person who headed the team. Another drawback is that persons punished by the offences will be mostly acting as workers at lower stage of that gang. The effective implementation of the provision aimed to eliminate this organized crime is difficult until the person or group ruling the organized crime group is detected and punished.

### **3. Petty organized crimes:**

Section 112 of the Bharatiya Nyaya Sanhita deals about the petty organized crimes. This provision list out the petty organized crimes and also provides the punishments for such petty organized crimes. These petty organized crimes are the unlawful act carried on by the group of persons or by a gang to get any financial or material benefits out of it.

Under section 112(2) of Bharatiya Nyaya Sanhita deals with the punishment for petty organized crimes. The persons engaged in petty organized crimes will be punished with imprisonment for a period not less than one year but it may extend up to seven year and also liable to pay fine.

The BNS list out six offences under petty organized crimes they are snatching, theft, cheating, gambling, unauthorized selling of public exam question papers or tickets at illegal manner and betting. They are recognized as a petty crime because of the nature of the effect or loss incurred to the victim. If it endangers the human life and society in greater proportionate then it can also be punished as per the section of organized crimes punishments.

### **3.1. Classification of offences:**

**Organized crimes:** all the offences under this section are cognizable and non-bailable. The competent court to trial these offences is court of sessions. This offence is non-compoundable offences.

### **Petty organized crimes:**

all the offences under this section are cognizable and non-bailable. The competent court to trial these offences is trailable by the first-class magistrate court. This offence is non-compoundable offences.

### **4. Compared with IPC:**

The main difference between Bharathiya Nyaya Sanhita and Indian Penal code is that the organized crime has no space in IPC but now it included in BNS as newer offence under

BNS. Another difference is that the punishments are made severe than IPC. The punishment depends on the intention, preparation, attempt and accomplishment of that crime IPC but in BNS the punishments depends upon the level of participating in that offence and also the impact created out of such illegal act.

## **5. Conclusions:**

The BNS provides for comprehensive provisions related to organized crimes. Since the organized crimes has a significant impact on society, affecting various aspects of life including economic, social, political, psychological and vulnerable groups. It is necessary to protect citizen, maintain law and order, economic stability, social cohesion and international cooperation. For that this legislation aims to combat organized crime effectively by providing for special provisions for investigation, prosecution, punishment and protection of witnesses and victims. By recognizing the need for protection against organized crimes government and societies can work together to develop strategies to prevent and combat these crimes promoting a safer and more secure world for all. The punishments prescribed under the BNS for organized crimes are constitutionally valid if they are proportionate to the gravity of the offences and do not infringe upon the fundamental rights.

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## 21. EMPIRICAL RESEARCH ON RIGHT AGAINST EXPLOITATION

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### ABSTRACT:

*The Bharatiya Nyaya Sanhita, 2023 (BNS) is Indian penal system , which was replaced the Indian Penal code 1860 (IPC). It has significant role which is deals with criminal codes and punishment for crime proved and punish such offences attempt and criminal conspiracy. It prevents the act of crime and protection of human rights is one of the important significance of this code. This research targets the concept ' Right against Exploitation ' of Constitution of India and human rights in Bharatiya Nyaya Sanhita perspective. How the Bharatiya Nyaya Sanhita, 2023 helps to protect the article 23 and 24 of Constitution of India 1950, and analysis it is enough to protect the human beings from human rights violation or not, compare with relevant case law. The researcher aim to analysis the International Convention, Treatise which related to ' right against exploitation ' had not adopted by our country and make comparative study with other county laws, to improve the protection of human rights. By this research, the researcher going to find that convention, treatise related to ' right against exploitation ' not adopt by our country and reason for not adopted. The researcher tell some recommendation which is, adopt new convention and other country laws which relate to 'right against exploitation', it result to strengthen the protection of human rights.*

**Keywords:** *Right Against Exploitation - International Conventions - Non-adopted conventions - Reason for non-adoption - Recommendation for adopt new conventions*

### INTRODUCTION:

India is a largest democratic country, it face many struggles to decrease the unlawful activities arise all over the country. The right against exploitation is main issues in the nation

the state has duty to provide peaceful life to every citizen. In 2023, the Global slavery Index (GSI) present report of 2021, in India there are 11 million people live their life as modern slavery<sup>1</sup>.

There is punishment furnish in Bharatiya Nyaya Sanhita (BNS), 2023 for abolition of slavery system in India but the crime rate were not decrease, the reason may be punishment is not enough or there is problem in implementation of punishment. This part contain non adopted convention by India related right against exploitation and analysis other country laws for make change in punishment system to dissolve the problem of exploitation in India.

### **ABOUT BNS:**

The Bharatiya Nyaya Sanhita, 2023 (BNS) is a modern Indian penal system which is replaced the Indian penal code, 1860 (IPC) which is came into force on July 1, 2024. The Bharatiya Nyaya Sanhita, 2023 (BNS) consist of 358 sections and 20 chapter. ‘ Inchoate conspiracy, emphasize the importance of preventing harms by penalising preparatory before the commission of the actual crime ’<sup>1</sup>.

### **RIGHT AGAINST EXPLOITATION:**

Exploitation means that where any person misuses power and forces other person to render service. The Right against exploitation is one of important part of fundamental rights of Constitution of India, 1950. It is express in Article 23 and 24. The exploitation violate the Article 21 of the constitution ‘ right to life ’ expect by law no one violate a person personal life.

Exploitation generally refers to the unjust or unfair taking advantage of another person or situation for their own benefit<sup>2</sup>

### **Article 23 - Prohibition of traffic in human beings and forced labour:**

1) 'Traffic in human beings, beg by force and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law'<sup>1</sup>.

This article says that any action or work done by force without consent of a person is violation of law and also any work done without remuneration is considered as beggar. Confinement of any person and use them any unlawful or get work without provide remuneration or other kinds of benefits it consider as human trafficking. If someone knowingly force someone into prostitution or enjoy the income which is derived from it, also consider as forced labour. The human trafficking is unconstitutional one, if anyone buying or selling any human being and use for illegal activity, they were punish under Bharatiya Nyaya Sanhita and other related act. The Human trafficking and Forced labour activity also violate Article 21 directly. The bonded labour include within the meaning of 'forced labour'<sup>3</sup>.

2) Nothing in this article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them'<sup>1</sup>

**Black 's Law dictionary.**

### **Bandua Mukti Morcha V. Union of India**

The government has power to assign compulsory work to the employee for public welfare, these kind of work not consider as forced labour system and also not violate the fundamental rights of the citizen. Those works must assign without any discrimination on the basis of religion, race, caste, or any other form . And also it express in part IV of constitution of India in article 51A (d) as ' in emergency situation like war, all citizen have duties to protect the nation it is assign by government. It is also exception for forced labour activity.

## **CASE LAW:**

### **1) People' s Union for Democratic Rights Vs Union of India**

The person who service as labour, the owner must provide minimum wages or otherwise it is ' Forced labour' .

### **2) Vishal Jeet Vs Union of India**

The Supreme Court dealt with child prostitution in hum an trafficking and was one of the stepping stone to same. The Supreme Court gave guideline to protect and rehabilitating children sold by Agents for the flesh trade and ones pits of Devadasi by their families or for cultural reasons.

## **MINOR ACTS:**

### **1) Suppression of Immoral Traffic in Women and Girls Act, 1956**

If any person above the age of 18 by knowingly enjoy the income of the prostitution women or girl partly or wholly, shall be punished with imprisonment for term which may extended to 2 years or fine extended to thousand rupees, or both.

### **2) Bonded Labour System (Abolition) Act, 1976**

This act prohibits the forced labour system . If any person enter into an agreement with creditor, if the debt amount were not properly paid, the creditor.

Article 24 - Prohibition of employment of children in factories, etc.:

'No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment' <sup>4</sup>.

This article states that, under the age of 14 no one shall work in any Mines, Factories or any hazardous place. Article 24 aims to protect the fundamental rights of the children by prohibiting the employment.

#### **CASE LAW:**

##### **M .C Mehta Vs State of Tamil Nadu (1996):**

This case aimed to end the child labour in the state of Tamil Nadu. The court ordered that compensation for affected child, establishment of rehabilitation program and strict enforcement of child labour laws. This case played a crucial role in strengthening child labour regulation in India, ensuring education and welfare measure for child.

#### **MINOR ACTS:**

##### **The Factories Act, 1948:**

This act set age limit for employment of children in factories. Under the age of 14 no one work in factories. Later, the age limits were changed to below the age of 17, no one work in factories by amendment in 1954.

##### **The Mines Act, 1952:**

This act prohibits the employment of people under the age of 18 years in mine.

##### **Child labour (Prohibition & Regulation) Act, 1986:**

##### **<sup>4</sup> Constitution of India, 1950**

This act prohibits a person who has not completed the age of 14, those people were not able to work in 13 occupation and 57 processes<sup>1</sup>. Later in 2016 amendment, the person who has not complete the age 18 ban to work in hazardous place.

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## **RELATED PROVISION IN BNS:**

Section 95: Hiring, employing or engaging a child to commit an offence.

‘If anyone hires, employs or engages any child to commit an offence shall be punished with imprisonment of not be less than three years but which may extend to ten years, and with fine; and if the offence be committed shall also be punished with the punishment provided for that offence as if the offence has been committed by such person himself’<sup>5</sup>.

Section 143: Trafficking of person.

a) ‘If any person, transports, receives a person, harbours or recruits for exploitation, in form of: By threats; or

b) Using force, or any other form of coercion; or

c) By abduction; or

d) By practising fraud, or deception.

e) By abuse of power; or

f) By incentive, it include any kind of benefits like money, in order to achieve the consent of any person having control over the person recruited, transported, harboured, transferred or received, commit the offence of trafficking.

2) Punishment for Trafficking, punished with rigorous imprisonment 7 to 10 years with fine.

3) Where the offence involve the trafficking, more than one person, punished with rigorous imprisonment 10 years to life imprisonment with fine.

4) Offence involves trafficking of a child, punished with rigorous imprisonment 10 years to life imprisonment with fine.

5) Offence involves trafficking of more than one child, punished with rigorous imprisonment 14 years to life imprisonment with fine.

6) If a person is convicted of the offence of trafficking of a child on more than one occasion, then such person shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

7) When a public servant or a police officer is involved in the trafficking of any person then, such public servant or police officer shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine ' 1.

The above section provides the punishment for human trafficking based on different perspective.

#### **CASE LAW: 1) Gangadi Kishor Babu Vs State of Telangana (25.10.2024)**

Based on the information the police officer conduct raid , found that the organizer who are A1 and A2 were running sexual work by engaging three female sex workers. In the said circumstances, when the cases cited by the learned Additional Public Prosecutor differ on facts, the customers were found along with sex workers and in the present case, they were found in the premises and there being no mention of these petitioners being present in the room along with sex workers, Section 143 of BNS is not attracted.

Further, the sex workers are not less than age of 18 hence, Section 144 of BNS is also not attracted, under age of 18 covered in POCSO ACT, 2012 and as state above, Sections 3 to 5 of the Act of 1956 are not attracted as far as the customers are concerned.

#### **Section 144: Exploitation of a trafficked person**

‘(1) Whoever, knowingly or having reason to believe that a child has been trafficked, engages such child for sexual exploitation in any manner, shall be punished with rigorous imprisonment for a term five to ten years, and shall also be liable to fine.

(2) Whoever, knowingly or having reason to believe that a person has been trafficked,

engages such person for sexual exploitation in any manner, shall be punished with rigorous imprisonment for a term which shall not be less than three years, but which may extend to seven years, and shall also be liable to fine ' 6

This section provides the punishment for child trafficking and using the child for sexual offence they were punished rigorous imprisonment for term of 5 to 10 year, with fine and the same kind of offence arises to any other person, punished 3 to 7 years with fine.

Section 97: Kidnapping or abducting child who is below the age of ten years with intent to steal from its person.

'Whoever kidnaps or abducts any child under the age of ten years with the intention of taking dishonestly any movable property from the person of such child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine'<sup>1</sup>.

### **Section 75: Sexual Harassment**

'(1) a man committing any of the following acts:-

- a) Physical contact and advances involving unwelcome and explicit sexual overtures; or
- b) A demand or request for sexual favours; or
- c) Showing pornography against the will of a woman.
- d) Making sexually coloured remarks, shall be guilty of the offence of sexual harassment.

2) Any man who commits the offence specified in clause (i) or clause (ii) or clause (iii) of sub-section (1) shall be punished with rigorous imprisonment for a term which may extend to three years, or with fine, or with both.

3) Any man who commits the offence specified in clause (iv) of sub-section (1) shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both ' 7.

## **NON – ADOPTION CONVENTIONS:**

### **1) Convention against torture and other cruel inhuman or degrading treatment or punishment.**

This convention came into force in 26<sup>th</sup> June 1 987 and it is adopted by General Assembly on 10<sup>th</sup> December 1984 .

#### **Article 1**

‘(1) For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from , inherent in or incidental to lawful sanctions’<sup>1</sup>

This article says that any kinds of torture arise to any person by forces or in any form like physically or mentally those things violated the natural rights of hum an beings this kinds of unlawful activity mostly done by public officers or by any influence person. Here public officer use their power in wrongful manner against the person, must make amendments provisions for increase the punishment to stop violation of hum an rights.

#### **Article 17:**

‘(1) there shall be established a Committee against Torture (hereinafter referred to as the Committee which shall carry out the functions hereinafter provided. The Committee shall consist of ten experts of high moral standing and recognized competence in the field of hum an rights, who shall serve in their personal capacity. The experts shall be elected by the States Parties, consideration being given to equitable geographical distribution and to the usefulness

of the participation of some persons having legal experience' <sup>8</sup>.

2) International Convention on the protection of the right of all migrant workers and members of their families.

This convention came into force in 1<sup>st</sup> July 2003 and it is adopted by General Assembly on 18<sup>th</sup> December 1990. It consists of 93 Articles and 1 Preamble, divided into IX parts.

**Article 10:**

'No migrant worker or member of his or her family shall be subjected to torture or 1. No migrant worker or member of his or her family shall be held in slavery or servitude.

2. No migrant worker or member of his or her family shall be required to perform forced or compulsory labour.

3. Paragraph 2 of the present article shall not be held to preclude, in States where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court.

4. For the purpose of the present article the term "forced or compulsory labour" shall not include:

- a) Any work or service not referred to in paragraph 3 of the present article normally required of a person who is under detention in consequence of a lawful order of a court or of a person during conditional release from such detention;
- b) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
- c) Any work or service that forms part of normal civil obligations so far as it is imposed also on citizens of the State concerned' <sup>9</sup>.

**CONSTITUTION OF THE FEDERATIVE REPUBLIC OF BRAZIL Article 23:**

"The Union, the states, the Federal District and the municipalities, in common, have the power: XII – To establish and to implement an educational policy for traffic safety" <sup>1</sup>

### **Article 227:**

It is the duty of the family, the society and the State to ensure children and adolescents, with absolute priority, the right to life, health, nourishment, education, leisure, professional training, culture, dignity, respect, freedom and family and community life, as well as to guard them from all forms of negligence, discrimination, exploitation, violence, cruelty and oppression.

**Paragraph 3:** The right to special protection shall include the following aspects: I – minimum age of fourteen years for admission to work, with due regard to the provisions of article 7, XXXIII;

**Paragraph 4:** The law shall severely punish abuse, violence and sexual exploitation of children and adolescents<sup>10</sup>.

### **SUGGESTION AND CONCLUSION:**

1. Analysis the crime rate of Right against exploitation in India and other country, find the reason low crime data country and applied that in our country.
2. Compare the punishment with other country and make amendment in provision.

### **International Convention on the protection of the right of all migrant workers and members of their families**

#### **Constitution of Brazil**

3. Here most of the children were affecting by exploitation and they were loss their fundamental rights and no proper education also one of the reason for it. So make preventive steps to protect them.

4. Convention against to truer and other cruel inhuman or degrading treatment or punishment

- a) This convention says that most of the crimes were done by the public official like

torture, take step to limits their power and decrease the offence.

- b) The custodial death were arise the public official use their power in illegal manner.
- c) The influence person also illegal force other and get benefits from that work, to stop those activities government need to take step make amendment in existing laws.
  - The Judicial officer must form a committee and analysis the reason for problem , because many problems were solved by the report of committee.
  - The Human rights department needs to give different kinds suggestion to Judiciary and to government to stop the hum an rights violation.

7. International Convention on the protection of the right of all migrant workers and members of their families

- a) This convention give protection to whole family and dependent of affected person, so India soon as possible adopts this convention is better to our nation.
- b) If any single person affected by unlawful action that also affects their family also directly or indirectly.

## 22. THE BHARATIYA NYAYA SANHITA, 2023 - MODERNIZING CRIMINAL LAW FOR A NEW INDIA

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### ABSTRACT

*The Bharatiya Nyaya Sanhita, 2023, marks a significant departure from the **Indian Penal Code of 1860**, aiming to modernize and contextualize criminal law within contemporary Indian society. This article delves into the historical evolution leading to the BNS and explores the core reasons necessitating this transformative shift. The IPC, a product of British colonial rule, served the interests of the colonizers, prioritizing order and control over individual rights and evolving societal needs. Its archaic language, outdated provisions, and complex structure hindered its effectiveness in addressing modern criminal challenges. The BNS emerges as a response to these limitations, seeking to create a more just, equitable, and efficient criminal justice system. Key drivers behind the BNS include the need to address contemporary crimes like **cyberstalking** and **mob lynching**, which were absent in the IPC. The BNS also prioritizes victims' rights, offering enhanced support and protection. Furthermore, it promotes **gender neutrality**, reflecting a commitment to equality and inclusivity. By simplifying legal language and streamlining procedures, the BNS aims to improve the efficiency and accessibility of the justice system. The BNS also seeks to align the criminal justice system with contemporary **Indian values**, fostering a sense of ownership and relevance. This comprehensive overhaul reflects a commitment to adapting the legal framework to the complexities of a rapidly changing world. The BNS, therefore, represents not merely a revision but a fundamental transformation of criminal law in India, poised to shape the future of justice in the country.*

**Keywords:** *cyberstalking, gender neutrality, Indian values, Indian Penal Code, Mob lynching*

### Introduction

The Bharatiya Nyaya Sanhita, a landmark legislation introduced in 2023, represents a comprehensive overhaul of India's criminal law framework. This new law aims to modernize

and align the country's criminal justice system with contemporary societal needs and constitutional principles. By replacing the antiquated Indian Penal Code of 1860, the BNS addresses the perceived shortcomings of the previous legislation and incorporates modern legal principles to create a more progressive and equitable criminal justice system.

The BNS, along with the Bharatiya Nagarik Suraksha Sanhita, 2023, and the Bharatiya Sakshya Adhiniyam, 2023, constitutes a trio of new legal codes designed to revamp the criminal justice system in India. These comprehensive reforms aim to enhance the fairness, efficiency, and transparency of the criminal justice process, ensuring that it keeps pace with the evolving needs and aspirations of the nation. The BNS, in particular, has been hailed as a significant step towards strengthening the rule of law and upholding the fundamental rights of all citizens.

### **Historical Context and the Need for Reform**

The Indian Penal Code of 1860, drafted by Lord Macaulay during the British colonial era, served as the foundation of criminal law in India for over a century. While the IPC provided a structured framework for defining offenses and prescribing punishments, its age and inherent colonial biases necessitated a thorough review and modernization to align with India's evolving legal landscape and societal values after independence. Several key factors underscored the pressing need for reform of the IPC.

The IPC reflected the socio-political context of British India, which was often at odds with the values and principles of independent India. The code embodied the colonial mindset and failed to adequately address the realities and aspirations of the Indian populace. Many provisions of the IPC were considered archaic and inconsistent with modern legal standards, human rights norms, and the changing dynamics of Indian society. These outdated laws required substantial revisions to ensure they remained relevant and effective. Over the decades, various judicial interpretations had led to complexities and ambiguities in the application of the IPC, necessitating legislative clarification and updates to provide greater legal certainty. The rise of new forms of criminal activity, such as cybercrime, economic offenses, and organized crime, required the introduction of novel legal provisions and enforcement mechanisms to address these emerging threats. Focus on Justice: There was a

growing emphasis on restorative justice, victim rights, and the rehabilitation of offenders, which called for a significant shift in the underlying penal philosophy of the IPC.

### **Key Objectives of the Bharatiya Nyaya Sanhita, 2023**

The Bharatiya Nyaya Sanhita, 2023, strives to achieve several key objectives through its modernization of India's criminal law framework. First and foremost, it seeks to update and modernize the criminal law to reflect contemporary social realities and legal principles. Secondly, the BNS aims to define and codify emerging crimes, addressing offenses such as cybercrime, economic offenses, and those related to terrorism and organized crime. It also aims to align the criminal law with constitutional principles and international human rights standards, ensuring the protection of human rights.

Furthermore, the BNS adopts a victim-centric approach by incorporating provisions for victim compensation, protection, and participation in the criminal justice process. It promotes restorative justice principles, focusing on the rehabilitation and reintegration of offenders into society. The BNS also aims to provide clarity and certainty by removing ambiguities and offering clear definitions of offenses and punishments, thereby reducing the scope for arbitrary interpretations. Lastly, it seeks to streamline criminal procedures and promote the use of technology to expedite investigations and trials.

### **Salient Features of the Bharatiya Nyaya Sanhita, 2023**

The Bharatiya Nyaya Sanhita, 2023, comprehensively classifies offenses based on their nature and severity. These categories include offenses against the state, public tranquility, the human body, and property.

#### **Offenses Against the State ( SECTION 147 TO 153 OF BNS)**

These acts, which threaten India's sovereignty, unity, and integrity, are considered the most serious offenses under the new Bharatiya Nyaya Sanshita code. Notably, the BNS has moved away from the specific offense of sedition, replacing it with broader provisions that address a wider range of actions against the state.

#### **Offenses Against Public Tranquillity (SECTION 189-197 OF BNS)**

This category covers offenses that disturb public order and harmony, such as rioting, unlawful assembly, and promoting enmity between different groups. These actions, which can disrupt the peace and stability of society, are strictly prohibited under the BNS.

### **Offenses Against the Human Body (SECTION 100 – 146 OF BNS)**

This category includes the most severe offenses, such as murder, culpable homicide, assault, battery, and grievous hurt. While the BNS retains most of the provisions from the Indian Penal Code related to these offenses, it also introduces some modifications to the definitions and punishments.

### **Offenses Against Property (SECTION 303 TO 334(2) OF BNS)**

The BNS maintains the IPC's provisions on theft, robbery, burglary, and cheating, while also adding new offenses to address the evolving nature of crime, such as cybercrime and financial fraud. These property-related crimes can have significant economic and social impacts, and the BNS aims to address them comprehensively.

### **Offenses Relating to Marriage (SECTION 80-87 OF BNS)**

This category includes offenses such as bigamy, adultery, and dowry-related offenses. The BNS recognizes the importance of protecting the sanctity of marriage and family relationships, and has retained these provisions to ensure social stability.

### **Offenses Against Women (SECTION 63-79 OF BNS)**

Recognizing the need for greater gender-based protections, the BNS includes specific provisions to safeguard women, such as offenses related to sexual harassment, stalking, and voyeurism. Additionally, the age threshold for victims in gang rape cases has been increased from 16 to 18 years, reflecting a stronger commitment to protecting minors.

### **Cybercrimes**

The BNS recognizes the growing and alarming trend of digital offenses and has introduced targeted provisions to address a wide range of cybercrimes. This includes measures to combat

hacking, data theft, online fraud, and the increasingly concerning threat of cyberterrorism. These digital crimes pose significant risks to individuals, businesses, and national security, and the BNS is taking proactive steps to enhance cybersecurity and protect vulnerable parties from such malicious activities in the digital realm.

### **Economic Offenses (SECTION 178-188 OF BNS)**

The BNS also addresses a range of financial crimes and fraudulent activities, such as money laundering, tax evasion, and corruption. These offenses are met with stringent penalties to deter such unethical and illegal practices that undermine economic stability and public trust.

## **2. Penalties and Punishments (SECTION 4-13 OF BNS)**

The BNS, 2023, prescribes a range of penalties and punishments for various offenses, including:

**Capital Punishment:** The BNS retains the death penalty as the ultimate punishment for the most heinous offenses, such as premeditated murder, acts of terrorism, and serious crimes against the state that pose a grave threat to national security and public welfare.

**Imprisonment:** The BNS prescribes both rigorous and simple imprisonment, with the duration and conditions determined by the nature and severity of the offense. Rigorous imprisonment involves hard labor, while simple imprisonment does not.

**Fines:** Monetary fines are widely utilized as either the sole punishment or in conjunction with imprisonment for a wide range of offenses. The BNS sets specific fine amounts based on the gravity of the crime.

**Confiscation of Property:** For economic offenses involving the acquisition of assets through illegal means, such as money laundering and corruption, the BNS authorizes the confiscation of the ill-gotten property.

**Community Service:** Aiming to promote restorative justice, the BNS introduces provisions for community service as an alternative sentencing option for certain offenses, allowing

offenders to make amends to the community.

### 3. Special Provisions and Safeguards

The BNS, 2023, includes several special provisions and safeguards to protect vulnerable groups and ensure fair trial:

**Protection of Women and Children:** The BNS includes comprehensive and stringent provisions to protect women and children from sexual offenses, domestic violence, trafficking, and other forms of exploitation. These measures aim to safeguard the rights and dignity of vulnerable groups within society.

**Rights of the Accused:** The BNS upholds the fundamental rights of the accused, ensuring they are entitled to a fair trial with access to legal representation and protection against self-incrimination. These provisions are crucial to maintain the principles of due process and the presumption of innocence.

**Victim Compensation:** The BNS provides for victim compensation in cases of violent crimes, recognizing the need to provide financial and other forms of support to those who have suffered harm. The state is responsible for administering this system of victim assistance to aid in their recovery and rehabilitation.

**Witness Protection:** The BNS includes robust provisions for witness protection to encourage individuals to come forward and testify without fear of intimidation or retaliation. This measure is vital to ensuring the integrity of the judicial process and securing justice for victims.

**Rehabilitation of Offenders:** The BNS emphasizes the importance of rehabilitating offenders, with provisions for vocational training, counseling, and reintegration programs. This holistic approach aims to address the root causes of criminal behavior and facilitate the offender's successful reintegration into society, reducing the risk of recidivism.

### 4. Use of Technology

Recognizing the importance of technology in modern law enforcement, the BNS, 2023, incorporates provisions for the use of technology in investigations and trials:

- a. **Cyber Forensics:** The BNS acknowledges the growing importance of cyber forensics in investigating and prosecuting cybercrimes. It recognizes the critical role that digital evidence plays in these cases and provides clear guidelines for the admissibility and handling of such evidence in the court of law. This ensures that perpetrators of digital crimes can be held accountable through rigorous and admissible digital forensic investigations.
- b. **Video Conferencing:** The BNS has incorporated provisions to allow for the use of video conferencing technology in judicial proceedings. This innovative approach enables the expedited handling of cases and ensures the participation of witnesses who may be unable to physically attend the court due to logistical or geographical constraints. By facilitating remote testimony, the BNS enhances the efficiency and accessibility of the judicial system.
- c. **Data Analytics:** Recognizing the value of data-driven insights, the BNS encourages the use of advanced data analytics techniques by law enforcement agencies. This allows for the identification of patterns, trends, and anomalies in criminal activities, enabling authorities to allocate resources more effectively and develop proactive strategies to prevent and mitigate crimes. The incorporation of data analytics empowers law enforcement to stay ahead of evolving criminal methods and better serve the needs of the community.
- d. **AI in Criminal Justice:** While not explicitly detailed in the search results, the broader context of legal modernization in India suggests that the BNS may implicitly support the integration of Artificial Intelligence in certain aspects of the criminal justice system, such as legal research and case management. However, ethical and legal safeguards would be necessary to prevent biases.

### Key Changes and Departures from the Indian Penal Code

The BNS, 2023, introduces several significant changes and departures from the Indian Penal Code:

**Sedition Law:** The BNS has taken a notable step by removing sedition as a specific offense. Instead, it includes more comprehensive provisions to address acts that endanger India's sovereignty, unity, and territorial integrity. This shift reflects a nuanced approach to balancing national security concerns with individual rights and freedoms.

**Cybercrimes:** The BNS provides a detailed and comprehensive legal framework for addressing the growing threat of cybercrimes. This recognizes the increasing importance of digital security in the modern age and the need for robust measures to protect individuals, businesses, and national interests from online attacks and digital exploitation.

**Economic Offenses:** The BNS has introduced more stringent penalties for economic offenses, signaling a strong commitment to combating corruption, financial crimes, and other unethical practices that undermine economic stability and public trust. This approach aims to deter such destabilizing activities and promote a fair, transparent, and accountable economic environment.

**Victim Compensation:** The BNS places greater emphasis on victim compensation and protection, aligning with modern principles of restorative justice. This shift recognizes the need to provide support and reparations to those affected by criminal acts, ensuring that the justice system addresses the needs of victims and promotes their healing and recovery.

**Restorative Justice:** The BNS incorporates the principles of restorative justice, which focus on rehabilitation and the reintegration of offenders into society. This approach aims to address the root causes of criminal behavior, foster accountability, and enable offenders to make amends and contribute positively to their communities, rather than relying solely on punitive measures.

### Challenges and Criticisms

**Despite its progressive features, the Bharatiya Nyaya Sanhita, 2023, faces several challenges and criticisms:**

**Infrastructure and Technology:** Significant resources must be dedicated to building the necessary infrastructure, such as specialized law enforcement units, secure digital systems, and modern forensic capabilities, to effectively investigate and prosecute the complex crimes addressed by the BNS.

**Capacity Building:** Comprehensive training programs for law enforcement, prosecutors, judges, and other relevant officials are essential to ensure they have the expertise to navigate the new legal framework and handle the sophisticated nature of the offenses covered by the BNS.

**Public Awareness:** Widespread public education campaigns are crucial to inform citizens about their rights and obligations under the new laws, fostering compliance and active

participation in the justice system.

**Judicial Preparedness:** The judiciary must be adequately resourced and empowered to manage the increased caseload and legal complexities introduced by the BNS, ensuring timely and fair adjudication of these matters.

**Safeguards against Misuse:** Robust oversight mechanisms and strong checks and balances must be implemented to mitigate the potential for misuse of certain provisions, particularly those related to offenses against the state, while ensuring the protection of individual rights and civil liberties.

**Balancing Rights:** Striking a delicate balance between the rights of the accused and the need to uphold public safety and national security is an ongoing challenge that requires continuous refinement and review of the legal framework and its implementation.

## Conclusion

The Bharatiya Nyaya Sanhita, enacted in 2023, represents a significant and ambitious step towards modernizing India's criminal law framework. By comprehensively addressing the perceived shortcomings of the antiquated Indian Penal Code and incorporating contemporary legal principles, the BNS aims to create a more just, equitable, and efficient criminal justice system that better aligns with the nation's evolving social, economic, and political realities. While the implementation of the BNS undoubtedly faces challenges and the potential for misuse remains a valid concern, the legislation reflects a concerted effort to uphold constitutional values, protect human rights, and promote restorative justice over purely punitive approaches. The BNS, alongside the Bharatiya Nagarik Suraksha Sanhita and the Bharatiya Sakshya Adhinyam, signifies a comprehensive and holistic endeavor to revamp India's legal landscape, with the overarching goal of building a "New India" that is firmly grounded in the principles of justice, fairness, and the rule of law.

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## 23. GENDER JUSTICE AND PROTECTION OF VULNERABLE SECTIONS UNDER BHARATIYA NYAYA SANHITA (BNS)

Muhammed Ameen and A. Mageesh Kumar<sup>1</sup>

### ABSTRACT

*The Bharatiya Nyaya Sanhita (BNS), a criminal statute in India, seeks to reform the criminal justice system with a focus on enhancing justice delivery and safeguarding the rights of marginalized and vulnerable sections of society. One of its pivotal features is its emphasis on gender justice and the protection of vulnerable sections, which align with contemporary concerns for inclusivity and equality.*

*The BNS recognizes the necessity to protect women, children, and other vulnerable groups, including marginalized castes, minorities, and economically disadvantaged communities. It aims to address systemic gender-based violence, including rape, sexual harassment, and domestic violence, by strengthening provisions that ensure more stringent penalties and comprehensive support systems for survivors. Importantly, the BNS introduces specific clauses aimed at gender-neutral language, striving to eliminate bias in criminal law and recognizing the multiplicity of gender identities, moving beyond the conventional binary.*

*For vulnerable sections, the BNS proposes the creation of special legal provisions that aim to provide protection against exploitation, trafficking, and harmful practices such as bonded labor, child labor, and discrimination based on caste, class, or disability. The draft code also aims to ensure better access to justice for these groups by providing for more accessible and sensitive procedures in legal proceedings, with mechanisms for legal aid and protective custody where necessary.*

*In sum, the BNS represents a significant step toward a more inclusive legal system. By advancing gender justice and ensuring the protection of vulnerable populations, it reflects the evolving socio-political landscape in India and strives to create a more equitable and just society. Its provisions could mark a paradigm shift in how justice is dispensed to historically marginalized and vulnerable communities, fostering social inclusion and human rights.*

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*Key Words: women, children, marginalized castes/ religious minorities, economically disadvantaged communities, gender-neutral language, legal aid, protective custody, stringent penalties.*

## **Gender Justice and Protection of Vulnerable Sections under Bharatiya Nyaya Sanhita (BNS)**

### **SYNOPSIS:**

1. Introduction
2. **Historical Context and Evolution of Gender Justice in India**
3. Sections under Bharatiya Nyaya Sanhita (BNS) relating to Gender Justice and Protection of Vulnerable Sections
4. Challenges in implementing Gender Justice and Protection of Vulnerable Sections under Bharatiya Nyaya Sanhita (BNS)
5. Role of Judiciary in ensuring Gender Justice and Protection of Vulnerable Groups
6. Future of Gender Justice and Protection of Vulnerable Sections
7. Conclusion

## 1. Introduction

The idea of gender justice involves legal, social, and political actions that guarantee equal rights, opportunities, and protections for all genders, with particular emphasis on women and marginalized groups. In India, the struggle for gender justice has traditionally been entangled in patriarchal norms, societal prejudices, and systemic discrimination based on gender. While the Indian Penal Code (IPC) has been the foundational framework for criminal justice, the Bharatiya Nyaya Sanhita (BNS), which is a revised version of India's criminal law system, aims to reshape and enhance the provisions related to gender justice, especially for vulnerable communities.

This paper investigates how the BNS tackles gender justice and safeguards vulnerable groups, including women, transgender people, and members of marginalized communities like Dalits and tribal populations. It will assess how issues such as gender-based violence, economic disparities, and social discrimination are handled within this framework, the adequacy of the legal system in upholding these protections, and the obstacles that marginalized communities face. Additionally, the paper will evaluate the progression of gender justice in India and how the BNS offers a route for improved legal safeguarding and societal inclusion.

## 2. Historical Context and Evolution of Gender Justice in India

The narrative of gender justice in India is closely connected to the nation's socio-political background, colonial legal frameworks, and the initiatives for social reform that followed independence. The idea of gender justice seeks to guarantee equal rights, respect, and opportunities for all genders, particularly women and other marginalized gender communities. Nonetheless, the journey toward achieving gender justice has been lengthy and filled with obstacles. The progression of gender justice in India can be comprehended through the historical context of colonial regulations, early reform movements, and the later establishment of legal measures in post-independence India.

### a. Colonial Legal Framework and Gender Inequality

Indian society was regulated by both British-imposed laws and traditional rules derived from

religion and customary norms throughout the British colonial era. The colonial judicial system frequently upheld patriarchal standards that limited the rights of underprivileged groups and women. The criminal justice system was established by the Indian Penal Code (IPC), which was passed in 1860 but reflected the gender biases of the day. It did not adequately address numerous gender-based concerns and gave women and gender minorities very little legal protection. Gender-based discrimination was institutionalized in a number of ways under the British legal system. Women had little authority over their own bodies, few property rights, and were frequently left out of contracts. Though their emphasis was more on moral and social reformation than gender equality, the British government acknowledged the necessity for specific changes to personal laws and customs such as child marriage and Sati (widow burning). In colonial India, gender violence was pervasive but mostly ignored. The laws that addressed discrimination, domestic violence, and sexual violence were either non-existent or insufficient. Women had few legal options, and social and cultural norms frequently disregarded or compromised their rights.

### **b. Pre-Independence Legal Reforms and Reform Movements**

Even though the colonial legal system was patriarchal, social and political activists spearheaded a number of reform campaigns that significantly pushed back against gender conventions. These revisions were crucial in creating gender-specific legislative modifications, although they were far from comprehensive. Early reformist groups that denounced customs like child marriage, sati, and the abuse of women were the Arya Samaj and the Brahmo Samaj, which Raja Ram Mohan Roy founded. The Widow Remarriage Act (1856), which permitted widows to remarry, and the Hindu Marriage Act (1955), which gave women legal protection in marriage and divorce, were among the reforms that these groups advocated for. The Sati (Prevention) Act of 1829, which outlawed the custom of widows self-immolating, which was common in various regions of India, is one of the major legislative reforms. The statute represented a substantial change in the acceptance of women's rights, despite being a component of the British colonial goal. The Child Marriage Restriction Act of 1929 sought to stop child marriages, which were common in India, and the Age of Consent Act of 1891, which raised the legal age of consent for girls from 10 to 12 years old, but was primarily a response to British authorities' concerns rather than an attempt to address child

sexual abuse.

### **c. Post-Independence Legal Reforms and Gender Justice**

Gender justice started to be more thoroughly addressed in the legal field after India gained independence in 1947, marking the beginning of a new age of social reform. The Indian Constitution's founders acknowledged the importance of gender equality and included clauses that forbade discrimination based on sex and gender when it went into force in 1950. In order to support women and other underprivileged groups in society, the Indian.

Constitution's Fundamental Rights (Articles 14, 15, and 16) ensure equality and nondiscrimination. For example, Article 15 forbids sex-based discrimination, while Article 16 guarantees equal opportunities in public employment. Important Laws Leading to Women After Independence include the Hindu Succession Act (1956) which provided women legal rights over their husbands' and kids' property as well as the ability to inherit ancestral property. An important step toward women's property rights was taken with the Act. The goal of the 1961 Dowry Prohibition Act was to end the dowry system, which had long been a means of exploiting Indian women. It turned giving and receiving dowries into a crime. The 2005 Protection of Women Against Domestic Abuse Act: In addition to offering legal channels for pursuing protection and restitution, this law aimed to shield women from all types of domestic abuse, including sexual, emotional, physical, and financial abuse. Act of 2013 to Amend the Criminal Law: Significant revisions were made to this Act in reaction to the Nirbhaya case, including harsher fines for rape and harsher sanctions for offenses including voyeurism, acid attacks, and stalking. Additionally, it added non-penile sexual activities to the definition of rape. Act of 2019 Concerning Transgender Persons (Protection of Rights): For the first time in Indian history, this Act acknowledged the rights of transgender individuals and sought to shield them from assault, abuse, and prejudice. It lays out plans for transgender people's healthcare and education and allows for the establishment of welfare boards for them.

### **3. Sections under Bharatiya Nyaya Sanhita (BNS) relating to Gender Justice and Protection of Vulnerable Sections**

In the Bharatiya Nyaya Sanhita (BNS), several sections address gender justice and protection of vulnerable sections, including those related to sexual offenses, cruelty, and trafficking, with some sections making offenses gender-neutral and introducing new provisions. Here's a breakdown of key sections:

### **Offenses Against Women and Children:**

**Chapter V:** Offences against women and children have been given precedence over all other offences in a new Chapter-V of BNS.

### **Sexual Offenses:**

**Section 67:** Sexual intercourse by husband upon his wife during separation.

**Section 68:** Sexual intercourse by a person in authority.

**Section 69:** Sexual intercourse by employing deceitful means, etc.

**Section 70:** Gang rape.

**Section 370A:** Addresses trafficking for sexual exploitation, forced labor, and other forms of abuse.

### **Cruelty:**

**Section 85:** Outlines the consequences for perpetrators of cruelty, including imprisonment for up to three years and imposition of fines.

**Section 86:** Expands the definition of "cruelty" to encompass conduct that could potentially drive a woman towards suicide or result in grave injury.

### **Child Marriage:**

**Section 108:** Stringent measures to prevent child marriage and protect affected children.

### **Kidnapping:**

**Section 137:** Proposes to make kidnapping of all children, irrespective of gender, an offence.

### **Trafficking:**

**Section 370:** Addresses trafficking.

**Section 371:** Addresses habitual dealing in slaves.

## **Sexual Harassment:**

**Section 354:** Deals with sexual harassment, with amendments making penalties more stringent.

### Rehabilitation and Victim Support

**Section 360:** Mandates that the victim be heard before a case is withdrawn from prosecution, emphasizing a victim-centric approach to criminal justice.

**Section 395:** This section likely deals with compensation for victims who have suffered loss or injury.

**Section 396:** This section outlines the scheme for providing funds for compensation to victims who have suffered loss or injury and require rehabilitation, with the State Government coordinating with the Central Government.

**Section 173(2):** The right of the victim to get a free of cost copy of FIR forthwith introduced.

**Section 193(3)(ii):** To make the law more victim centric, it is mandated that the police officer must inform the progress of investigation to the informant or victim within 90 days of the investigation.

## **4. Challenges in implementing Gender Justice and Protection of Vulnerable Sections under Bharatiya Nyaya Sanhita (BNS)**

The execution of gender justice and safeguarding vulnerable groups under the Bharatiya Nyaya Sanhita (BNS) faces numerous challenges. Although the BNS represents a thorough and progressive reform of India's criminal justice framework, its success depends on addressing various obstacles that could impair effective execution. These challenges include institutional problems, societal barriers, resource limitations, and legal uncertainties. The following are the main challenges in realizing gender justice and the protection of vulnerable groups under the BNS:

### **a. Institutional and Law Enforcement Challenges**

A significant aspect of the BNS is the mandate for gender-sensitive training for law enforcement personnel. Nonetheless, the police in India frequently lack adequate training to manage cases involving gender-based violence, including domestic abuse, sexual assault, and harassment. Furthermore, officers may demonstrate gender biases that influence how they treat victims, particularly in incidents of rape or dowry harassment. The BNS calls for the creation of dedicated police units and expedited courts to ensure prompt handling of gender-based violence cases. However, limitations in resources, including both personnel and facilities, can hinder the ability of law enforcement and judicial systems to process these cases effectively.

#### **b. Societal and Cultural Barriers**

Patriarchal beliefs and entrenched gender biases in society can hinder the proper implementation of gender justice. In numerous regions, there is a propensity to normalize or downplay instances of gender-based violence, particularly concerning domestic abuse or sexual harassment. These societal norms frequently lead to blaming victims and exerting pressure on them to remain silent. Legal changes, such as making marital rape a criminal offense or imposing harsher penalties for dowry-related violence, encounter pushback from certain societal factions who may perceive a threat from the change in gender dynamics. This opposition can arise from conservative groups, political interests, or traditional family structures that focus on maintaining the current power relations.

#### **c. Delays and Backlog in the Judicial System**

India's judicial system is well-known for its large number of pending cases, resulting in prolonged trial times. The BNS suggests implementing fast-track courts to more effectively manage cases of gender-based violence. Nonetheless, without a substantial boost in the number of judges and court facilities, these courts may continue to experience delays, particularly in intricate cases or those involving several victims.

#### **d. Social Stigma and Victim Blaming**

Individuals who experience gender-based violence frequently encounter societal stigma, particularly in instances of rape, domestic abuse, or sexual harassment. Survivors may worry about being criticized, shamed, or held responsible for what happened to them, causing many to refrain from reporting incidents or to retract their complaints.

**e. Lack of Awareness and Education**

Numerous individuals, particularly in rural regions, are often unaware of their legal rights under the BNS and the resources accessible to them in instances of gender-based violence. Furthermore, geographic limitations, financial difficulties, or insufficient literacy can restrict access to legal assistance.

**f. Political and Legal Loopholes**

Although the BNS tackles various components of gender justice, there could remain legal uncertainties or gaps that enable offenders to evade accountability. For instance, laws regarding rape may encounter difficulties in clearly defining consent in challenging situations or may not adequately safeguard survivors in instances of online harassment. Although the BNS includes measures for compensation, rehabilitation, and medical assistance for victims of gender-based violence, these support systems typically necessitate substantial financial resources. Nevertheless, numerous state governments and local authorities may find it challenging to dedicate adequate funds for programs that assist victims.

**5. Role of Judiciary in ensuring Gender Justice and Protection of Vulnerable Groups**

The judiciary plays a crucial role in ensuring gender justice and the protection of vulnerable groups by interpreting and enforcing laws, upholding fundamental rights, and promoting social justice. The judiciary is instrumental in addressing and combating gender-based violence (GBV), including domestic violence, sexual harassment, trafficking, and honor-based crimes. By interpreting laws like the Protection of Women from Domestic Violence Act or laws on sexual offenses, the courts provide protection and justice for victims, ensuring perpetrators are held accountable. Vulnerable groups include women, children, people with disabilities, ethnic and racial minorities, LGBTQ+ individuals, and marginalized communities. The judiciary ensures their protection by interpreting laws that safeguard their

rights, such as the Right to Education for children, equal opportunity for persons with disabilities, and anti-discrimination laws for LGBTQ+ individuals. So far Judiciary in landmark judgments set precedents for gender justice, influencing future legal cases. Courts have often called for legislative changes when laws fail to provide adequate protection for vulnerable groups or address emerging social issues. Following are some of the landmark cases in which the Judiciary has upheld Gender Justice.

**a. Vishakha v. State of Rajasthan<sup>1</sup>**

The Supreme Court of India laid down the Vishakha Guidelines, which mandated that employers establish a policy and internal mechanisms for addressing sexual harassment at the workplace. This was a revolutionary judgment that filled the legislative gap, given the absence of a specific law on sexual harassment at the time. It led to the eventual enactment of the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013

**b. Shah Bano Case (Mohd. Ahmed Khan v. Shah Bano Begum)<sup>2</sup>**

The Supreme Court ruled that a Muslim woman was entitled to receive maintenance under Section 125 of the Criminal Procedure Code (CrPC), which applies to all citizens, regardless of religion. The judgment emphasized that maintenance is a right, irrespective of personal laws. The case stirred debates about personal laws, leading to the enactment of the Muslim Women (Protection of Rights on Divorce) Act, 1986.

**c. Triple Talaq Judgment (Shayara Bano v. Union of India)<sup>3</sup>**

The Supreme Court declared triple talaq unconstitutional, calling it arbitrary, discriminatory, and violating the fundamental rights of women under Articles 14 (Equality before law), 15 (Non-discrimination), and 21 (Right to life and personal liberty) of the Constitution. This

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<sup>1</sup> AIR 1997 SC 3011

<sup>2</sup> 1985 AIR 945

<sup>3</sup> [2017] 9 S.C.R. 797

judgment led to the Muslim Women (Protection of Rights on Marriage) Act, 2019, which criminalized the practice of triple talaq.

**d. Navtej Singh Johar v. Union of India<sup>4</sup>**

The Supreme Court struck down Section 377 of the Indian Penal Code (IPC) to the extent that it criminalized consensual same-sex relationships between adults, declaring it unconstitutional and a violation of the right to privacy and equality. This judgment was a major victory for the LGBTQ+ community in India, affirming their right to equality and dignity.

**e. Indian Young Lawyers Association v. State of Kerala (Sabarimala Case)<sup>5</sup>**

The Supreme Court ruled that the practice of prohibiting women of menstruating age (10-50 years) from entering the Sabarimala temple was unconstitutional, as it violated the rights of women to equality (under Article 14), freedom of religion (under Article 25), and the right to life (under Article 21). This judgment was a significant step towards gender equality in religious spaces, although it sparked widespread protests and debates.

**f. Manohar Lal Sharma v. Union of India<sup>6</sup>**

The Supreme Court upheld the decision to try minors (those above 16 years) as adults for heinous crimes like rape and murder, a decision that was later codified in the Juvenile Justice (Care and Protection of Children) Act, 2015. The judgment addressed concerns about the treatment of juveniles in the criminal justice system and paved the way for stronger legal measures to ensure justice for victims of crimes, especially sexual violence.

**g. D. K. Basu v. State of West Bengal<sup>7</sup>**

The Supreme Court issued guidelines to ensure the protection of individuals against torture and custodial violence. The court mandated that the police follow strict procedures during

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<sup>4</sup> 2018 INSC 790

<sup>5</sup> [2018] 9 S.C.R. 561

<sup>6</sup> (2013) 2 SCC 493

<sup>7</sup> 1997 (1) SCC 416

arrest and detention, including informing the arrestee of the reasons for their arrest. The ruling provided safeguards for the rights of vulnerable groups, especially in cases where they were detained or arrested under abusive conditions.

**h. Bijoe Emmanuel v. State of Kerala<sup>8</sup>**

The Supreme Court held that children belonging to the Jehovah's Witnesses, who refused to sing the national anthem on grounds of religious belief, were within their rights to abstain. The Court recognized that the right to freedom of speech and expression (Article 19) and religion (Article 25) also includes the right to refrain from actions that violate one's religious principles. The judgment protected the rights of religious minorities and upheld their freedom to practice their religion without coercion.

**i. Safai Karamchari Andolan v. Union of India<sup>9</sup>**

The Court acknowledged that manual scavenging is a practice that violates fundamental rights, including the right to dignity, equality, and the right to life (under Articles 15, and 21 of the Indian Constitution). The judgment helped bring the issue of manual scavenging to the forefront of national discourse, emphasizing that it is not just an economic or employment issue but one that is rooted in social justice, human rights, and dignity.

**j. National Legal Services Authority v. Union of India<sup>11</sup>**

The Supreme Court recognized transgender people as a third gender and directed the government to ensure legal, social, and economic rights for them, including the right to self-identify their gender, access to education, and healthcare, and protection from discrimination. This landmark judgment led to the recognition of the third gender under the law, providing transgender individuals with essential rights and legal recognition.

These judgments represent a profound shift in the legal landscape of India, each addressing critical issues of gender justice, equality, and the protection of vulnerable groups. They not

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<sup>8</sup> 1986 (3) SCC 615

<sup>9</sup> (2014) 6 SCC 624

only provide justice in individual cases but also serve as catalysts for broader legal reforms and societal changes aimed at securing fundamental rights for all citizens, especially women, minorities, and marginalized communities.

## **6. Future of Gender Justice and Protection of Vulnerable Sections in India**

The future of gender justice and the protection of vulnerable sections in India looks promising, but challenges remain. As society evolves, so too do the legal, social, and political frameworks aimed at advancing equality and safeguarding the rights of marginalized groups. The road ahead involves strengthening legal protections, improving implementation, and fostering societal change. Some key aspects shaping the future include:

### **A. Strengthening Legal Frameworks**

As gender dynamics evolve, future legal frameworks might focus on creating gender-neutral laws, especially concerning issues like inheritance, property rights, and workplace discrimination. Laws could better reflect the diverse needs of both men and women, including LGBTQ+ communities, promoting equality beyond the binary gender system.

### **b. Improved Enforcement and Accountability**

Legal frameworks alone are not enough if they are not properly implemented. Future progress will depend on improving enforcement mechanisms. This includes strengthening the police force, judiciary, and other relevant bodies to handle gender-based violence, harassment, and exploitation cases swiftly and effectively

### **c. Educational Reforms and Awareness**

Public campaigns about legal rights and protections will help empower marginalized communities to stand up for themselves. This includes education on issues like domestic violence, sexual harassment, and LGBTQ+ rights

#### **d. Digital Justice and Access to Technology**

Digital platforms could play a larger role in providing remote legal services, online counseling, and support for vulnerable groups. E-filing systems, virtual courts, and online dispute resolution mechanisms could make justice more accessible, especially for people from marginalized or rural areas.

#### **e. Social Transformation and Changing Attitudes**

Efforts should be made to change cultural narratives around gender roles, caste discrimination, and sexual orientation. This includes challenging traditional gender roles that restrict women and minorities from exercising their rights and freely participating in society.

#### **f. Inclusive Policies and Affirmative Action**

The government must expand affirmative action programs to ensure better representation of women, Dalits, and other marginalized groups in education, employment, and political representation.

### **7. Conclusion:**

The future of gender justice and the protection of vulnerable sections in India will hinge on continuous reforms in legal, social, and cultural domains. The nation will need to overcome deeply rooted patriarchy, casteism, and discrimination through stronger laws, societal awareness, and active state intervention. If sustained efforts are made across government, judiciary, civil society, and the public, India can continue to progress towards a more inclusive and equal society for all its citizens, irrespective of gender, caste, or sexual orientation.

The Bharatiya Nyaya Sanhita (BNS), India's criminal code, is poised to significantly impact the future of gender justice and the protection of vulnerable sections. The BNS aims to strengthen legal protections for women, children, LGBTQ+ individuals, and marginalized communities by incorporating more comprehensive provisions for addressing gender-based

violence, discrimination, and exploitation. It focuses on harsher punishments for crimes like sexual violence, trafficking, and domestic abuse, signaling a commitment to deterrence and accountability.

The code also places emphasis on victim protection, ensuring better mechanisms for rehabilitation and support for survivors of crimes. It introduces provisions that aim to bridge gaps in existing laws, like recognizing the needs of transgender individuals, and strengthening protection for minorities and Dalits.

However, the effectiveness of the BNS in achieving gender justice and safeguarding vulnerable sections will depend on proper enforcement and public awareness. It will require adequate implementation at all levels of governance, ensuring that the law is not just a tool for justice on paper but translates into real-world change.

In conclusion, the future of gender justice under the BNS holds significant promise, provided it is supported by continuous social reform and robust legal action, ensuring equity and dignity for all.

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**24. AN ANALYTICAL STUDY OF THE TRANSFORMATIVE APPROACH OF  
BHARTIYA NYAYA SANHITA WITH SPECIAL REFERENCE TO GENDER  
JUSTICE AND VULNERABLE SECTIONS OF SOCIETY.**

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**Abstract**

*Indian Society is diverse in nature, also it is a tough task to normalise the crime rates due to the diverse nature of the crimes. Indian society includes people who are historically disadvantaged groups that have faced discrimination and marginalization due to the caste system. A low crime rate makes a good civic society, There are some indicators through which one can understand the nature of society. i.e., crime rate, education levels, gender equality measures, income inequality, female foeticide, etc. Bhatiya Nyaya Sanhita, 2023, plays a vital role in curbing the crime against women and children and offenses affecting the human body. Bhartiya Nyaya Sanhita (BNS) 2023 marks a transformative shift in India's criminal justice system by addressing long-standing legal ambiguities and ensuring a more victim-centric approach. If the law does not prevail in society, then the crime rate will intensify and that tends to chaos in society. The formulation and clarification of the law should be very pinpointed and directly proportional to civilian trust as well as upon whom the law applies. If the law is not victim-centric, then the law cannot work and fails in fulfilling its objective. There was a need for transformation in Indian criminal law because several grey areas existed where the law remained silent. In the new Amendment, some work has been done regarding the enhancement of punishment, safeguards against sexual offenses, human trafficking, mob lynching, expansion of definition, etc. Also, some sections have been modified and introduced. This paper evaluates these changes, their implications, and the challenges that remain in achieving comprehensive justice.*

**Keywords:** *Bhartiya Nyaya Sanhita, Gender justice, Society, Vulnerable section, Approach*

**Research objective:**

- 1) To examine the victim-centric approach in Bharatiya Nyaya Sanhita.

- 2) To analyse the role of Bharatiya Nyaya Sanhita in strengthening civilian trust in the justice delivery system.
- 3) To analyse the challenges in achieving comprehensive justice due to the implementation of Bharatiya Nyaya Sanhita.
- 4) To analyse the impact of Bharatiya Nyaya Sanhita on gender justice and vulnerable sections of society.

### **Research methodology**

This research paper is based on the qualitative and analytical design. It will focus on a thorough legal analysis of various sections related to gender justice and vulnerable sections of the society.

### **Research question**

- 1) How does the Bharatiya Nyaya Sanhita fill the gaps in the Indian criminal justice system, particularly regarding gender bias and vulnerable sections of the society?
- 2) What challenges remain in the Bharatiya Nyaya Sanhita provision specifically related to gender and the vulnerable sections of society?
- 3) What is introduced in Bharatiya Nyaya Sanhita regarding gender justice, and how effective are these amendments in enhancing legal clarity?

### **Background**

On July 1, 2024, Bharatiya Nyaya Sanhita (BNS) replaced the Indian Penal Code, 1860, and came into effect. Old criminal law (IPC) had governed for over 160 years. The new law marks the perpetrator's presence very stringently in mind through its dynamic provisions. It leads to transformation by dealing with legal ambiguities, specific work on a victim-centric approach, and incorporating provisions that align with the changing socio-legal landscape of India. By looking at the velocity of crime in the 21<sup>st</sup> century, there was a dire need for socio-friendly law, which fulfills the needs of society at large. The objective behind this reform is

to modernize India's criminal justice system, making it more stringent, transparent, effective, and victim-focused while ensuring justice to all sections of the society, especially children, women, and the deprived section of the society. Bhartiya Nyaya Sanhita, 2023, has more clarity than the Indian penal code, 1860. Also, it enhances punishments for heinous offences, introduces new offences, and strengthens procedural safeguards to make the justice system more robust. Bhartiya Nyaya Sanhita harmonizes provisions, removes redundancies, and aligns with contemporary legal principles.

## **Introduction.**

Chapter v of Bhartiya Nyaya Sanhita, 2023, discusses the offenses against women and children. Section sixty-three (63) to Ninety-nine (99) deals with the offences and punishment regarding women and children. And section one thirty-seven (137) to section one forty-six (146) of chapter VI Bharatiya Nyaya Sanhita, 2023 talks about offenses like kidnapping, abduction, Slavery, and forced labor. As far as the Approach of Bhartiya Nyaya Sanhita is concerned, it signifies the Indianization of colonial legislation and reflects a transition from punishment as the fundamental tenet of justice to a more comprehensive interpretation of justice.<sup>1</sup> Implementing the new law was a "watershed moment" because these changes gave trigeminus to the justice delivery system. The definition of gender, which is defined in section 2(10)<sup>2</sup>, explicitly includes transgender individuals, which decidedly ensures broader legal recognition and protection. New criminal law omitted the provisions of previously criminalized "unnatural offence," Including same-sex relations. It incorporates gender-sensitive language or gender-neutral language and broader protections for victims of sexual and domestic abuse. Bharatiya Nyaya Sanhita, 2023, deputize provisions more stringently to protect the vulnerable section of society, including stricter penalties for offenses targeting women, children, and marginalized sections. It also focuses on the measures regarding child abuse and domestic violence. Penalties for serious offenses such as Rape, murder,

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<sup>1</sup>Available at: <https://www.legalserviceindia.com/legal/article-18491-shortcomings-of-the-bharatiya-nyaya-sanhita-2023-an-analytical-perspective> (Last visited on March 06, 2025)

<sup>2</sup> Bharatiya Nyaya Sanhita, 2023 (Act 45 of 2023), S.2(10).

kidnapping, and theft have been increased, and mandatory minimum punishments have been introduced for certain crimes to ensure stricter enforcement.<sup>3</sup>

### **Analysis of Changes In Provisions.**

Bharatiya Nyaya Sanhita introduces a dedicated new chapter on offences against women and children, which is Chapter Five of the act. In act, several provisions uphold the safety of women and children. Severe penalties, including life imprisonment or death sentences in exceptional cases, are mentioned regarding offences against girls below 18 years. In Bharatiya Nyaya Sanhita, several offences have been made gender neutral in terms of both the victim and perpetrator, which gives strength to law enforcement agencies as well as the public at large in society. Sections were added in Bharatiya Nyaya Sanhita, which penalizes the exploitation of children (Hiring, employing, engaging). Also, a child used for sexual exploitation or pornography is covered under BNS. Some sections are made in this way that if a rape is committed on a minor then all the sections of the Protection of Children from Sexual Offences (POSCO) will be invoke. In the cases of consensual rape cases in which the existing age limited is changed and it raised from 15 years to 18 years. Drastic changes are seen in BNS because a new provision is incorporated regarding sexual intercourse by employing deceitful means and also in the cases of gang rape the age-based parameters were removed and now provides punishment up to death penalty for gang rape of women under 18 years of age.

### **Thorough analysis of relevant sections**

Chapter 5 of Bharatiya Nyaya Sanhita deals with offenses against women and children.

Chapter is further bifurcated into 5 parts; sections (63-73) deal with crime related to sexual offences, section (74-79) deals with criminal force and assault against women, (section 80-87) deals with offences relating to marriage, section (88-92) deals with offences of causing marriage, etc. and lastly section (93-99) deals with crimes against child.

As per as transformation in sexual offences is concerned Rape is defined in section 63 of Bharatiya Nyaya Sanhita,2023, and only exception 2 is changed “where it is mandated that if

<sup>3</sup> Adv. Sanjay Sarraf and Dr. Deepak Kumar Srivastav,” The Bhartiya Nyaya Sanhita: A comprehensive overview of India’s new criminal law” 12 international journal of creative research thoughts 587 (2024)

the age of the wife is below 18, the exception to rape would not apply.<sup>4</sup> In the Indian penal code, the age limit was 15 years.<sup>5</sup> In Bharatiya Nyaya Sanhita, section 69 is newly added, which deals with sexual intercourse by employing deceitful means, etc. The offence under this section is cognizable, non-bailable, non-Compoundable, and triable by a court of session. In which punishment is Up to imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.<sup>6</sup>

Terminology “deceitful means” shall include inducement for, or false promise of employment or promotion, or marrying by suppressing identity<sup>7</sup>. Section 70 of Bhartiya Nyaya Sanhita,2023 deals with gang rape<sup>8</sup>. This section is very inclusive. Section 70 of BNS corresponds to sections 376-D,376-DA, and 376-DB. In old law (IPC), punishment for gang rape on women under sixteen years of age shall be punished with imprisonment for life and with fine.<sup>9</sup> Further punishment for gang rape on women under twelve Year of age shall be punished with imprisonment for life and with fine, or with death. In the new law, the age bar limit in section 70(2) is 18 years.<sup>10</sup>

As far as transformation in criminal force and assault against women is concerned, sections 74-79 deal with criminal force and assault against women.<sup>11</sup> Section 76 of Bharatiya Nyaya Sanhita,2023, deals with Assault or use of criminal force to a woman with the intent to disrobe. This section corresponds to section 354-B of the Indian penal code. The terminology “whoever” is used in the very beginning of section 76 of Bharatiya Nyaya Sanhita; In the earlier Act (IPC), the term “man” is used. Section 76 has been made gender neutral by using the term “whoever” instead of man.<sup>12</sup> Section 77 of the Bharatiya Nyaya Sanhita,2023, deals with voyeurism; the corresponding section of this provision in the Indian penal code is Section 354C. There are no changes in the abovementioned provision. The terminology “whoever” is used in the very beginning of section 77 of Bhartiya Nyaya Sanhita; In the

<sup>4</sup> Bharatiya Nyaya Sanhita,2023 (Act 45 of 2023), S.63.

<sup>5</sup> The Indian Penal Code, 1860 (Act 45 of 1860), s.375.

<sup>6</sup> Bharatiya Nyaya Sanhita,2023 (Act 45 of 2023), S.69.

<sup>7</sup> ibid

<sup>8</sup> Bharatiya Nyaya Sanhita,2023 (Act 45 of 2023), S.70.

<sup>9</sup> The Indian Penal Code, 1860 (Act 45 of 1860), ss.376-D,376-DA, 376-DB.

<sup>10</sup> Bharatiya Nyaya Sanhita,2023 (Act 45 of 2023), S.70.

<sup>11</sup> Bharatiya Nyaya Sanhita,2023 (Act 45 of 2023)74,75,76,77,78,79.

<sup>12</sup> Bharatiya Nyaya Sanhita,2023 (Act 45 of 2023), S.76.

earlier Act (IPC), the term “man” was used. Section 77 has been made gender neutral by using the term “whoever” instead of man<sup>13</sup>.

Sections (80-87) of Bharatiya Nyaya Sanhita,2023, are concerned, which deal with offences relating to marriage; there are no changes as such, only alteration/ variation in section number happened in old and new laws. Also, the Same is true about sections (88-92) of Bharatiya Nyaya Sanhita,2023, which deal with offences causing miscarriage overall; there is no such change in the provisions in the old and new act except alteration in the section number.

If we talk about Sections (93-99) of Bharatiya Nyaya Sanhita,2023, Section 95 of Bharatiya Nyaya Sanhita, 2023, deals with a new provision, which says that hiring, employing, engaging, or using a child for sexual exploitation or pornography is covered within the meaning of this section. For this offence, the punishment is not less than three years but may extend to ten years and with a fine.<sup>14</sup> This section is newly added. Section 98 of Bharatiya Nyaya Sanhita,223, talks about offenses regarding selling children for purposes of prostitution, etc. The Corresponding Section is section 372 of the Indian Penal Code, 1860. In the old law (IPC), the age limit is 18 years inscribed and the term minor is used. But in the new law (BNS), the terminology changed, and the word child is mentioned, and there is no age mentioned, which gave a broad spectrum to look in those aspect. In both acts, punishment remained the same.<sup>15</sup>

Section 99 of Bhartiya Nyaya Sanhita, 2023, deals with buying a child for purposes of prostitution, etc. The corresponding section is section 373 of the Indian Penal Code, 1860. In the old law (IPC) the age is determined, but in the new law (BNS), the terminology changed and the word child is mentioned, which gave a broad spectrum to look in those aspects also in old law age limit is of eighteen years is inscribed but in new law there is no age limit is mentioned.<sup>16</sup> In provisions related to buying children for purposes of prostitution, there is variance in the punishment aspect. In old law (IPC), punishment may extend to ten years, and the offender shall also be liable to a fine. But in new criminal law (BNS), the perpetrator shall

<sup>13</sup> Bharatiya Nyaya Sanhita,2023 (Act 45 of 2023), S.77.

<sup>14</sup> Bharatiya Nyaya Sanhita,2023 (Act 45 of 2023), S.95.

<sup>15</sup> Bharatiya Nyaya Sanhita,2023 (Act 45 of 2023), S.98.

<sup>16</sup> Bharatiya Nyaya Sanhita,2023 (Act 45 of 2023), S.99.

be punished with imprisonment of either description for a term which shall not be less than seven years but which may extend to fourteen years, and shall also be liable to fine<sup>17</sup>.

Chapter VI of Bhartiya Nyaya Sanhita,2023, discusses offenses affecting the human body. Section 137 talks about kidnapping. The corresponding sections are sections 359 to 361 and 363 in the Indian Penal Code,1860. The word child is added in Bharatiya Nyaya Sanhita.<sup>18</sup> The scope has been widened by replacing the word any minor of Age limit sixteen years for males and eighteen years for females. There are no changes in punishment aspects.<sup>19</sup> Section 139 of Bharatiya Nyaya Sanhita, 2023, deals with kidnapping or maiming a child to beg. The Corresponding Section is section 363-A of the Indian Penal Code, 1860. In the old law (IPC), the age is determined by referring to the word minor<sup>20</sup> but in the new law (BNS), the terminology changed, and the word child<sup>21</sup> is mentioned, which gave a broad spectrum to look at in those aspects. Also, in the old law, the age limit is eighteen years for females and sixteen for males, but in the new law, there is no age limit mentioned. In the new act (BNS), the punishment has changed regarding this offense. Whoever kidnaps any child from lawful guardian for the purpose of begging shall be punished of rigorous imprisonment for a term which shall not be less than ten years and can extend to imprisonment for life and shall be liable for a fine. And whoever maims any child for the purpose of begging shall be punished with imprisonment for which is not less than twenty years but may extend to person's natural life and with fine.<sup>22</sup>

Sections 140(1), (2), (3), and (4) of Bharatiya Nyaya Sanhita, 2023 deal with kidnapping or abducting in order to murder or for ransom, etc. The Corresponding sections are 364, 364-A,365, and 367, respectively, of the Indian Penal Code, 1860. In both acts, punishment remained the same. Section 141 of Bhartiya Nyaya Sanhita, 2023, deals with the Importation of a girl or boy from a foreign country. The Corresponding section is 366-B of the Indian Penal Code, 1860. Previously, only the word girl under the age of twenty-one years was

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<sup>17</sup> *ibid*

<sup>18</sup> Bharatiya Nyaya Sanhita,2023 (Act 45 of 2023), S.137

<sup>19</sup> *ibid*

<sup>20</sup> The Indian Penal Code, 1860 (Act 45 of 1860), s.363-A.

<sup>21</sup> Bharatiya Nyaya Sanhita,2023 (Act 45 of 2023), S.139.

<sup>22</sup> Bharatiya Nyaya Sanhita,2023 (Act 45 of 2023), S.139.

written, but now it has been broadened, and the word boy has also been included<sup>23</sup>. Punishment remained the same in the old and new acts.

Section 143 of Bharatiya Nyaya Sanhita, 2023, deals with the Trafficking of persons. The Corresponding section is 370 of the Indian Penal Code, 1860. In old law (IPC) terminology, minor is written, but in new law (BNS) terminology, it is changed, and the word child is mentioned in place of the word minor in 143 (4), (5), and (6), which gave a broad spectrum to look in those aspects<sup>24</sup>

Section 144 of Bharatiya Nyaya Sanhita, 2023, deals with the exploitation of a trafficked person. The Corresponding Section is 370-A of the Indian Penal Code, 1860. In old law (IPC) terminology, minor is written, but in new law (BNS) terminology is changed and word child is mentioned which gave a broad spectrum to look in those aspect. There is a change in the punishment in section 144 (1); the punishment is not less than five years but may increase to ten years and liable for fine. In section144 (2), the punishment is not less than three years but may extend to seven years, and the offender is liable for a fine.<sup>25</sup>

### **Socio-legal impact of Chapters 5 and 6 (Bharatiya Nyaya Sanhita)**

The relationship between Law and society should be corroboratory. Law always reflects the mood of society in different perspectives. Law is a tool for resolving the occasional disputes that may arise and keeps society stable and balanced. A central function of law is to ensure that people will cooperate and that society will operate in a smooth and integrated fashion.

Chapter 5 of BNS specifically focuses on offenses against women and Children. Chapter 6 focuses on offences that affect the human body. Earlier in IPC, most of the sections were scattered in various chapters, but BNS brings all such crimes against women and children in one chapter. It is easier to prosecute and potentially lead to stricter punishments for offenders while focusing on encouraging gender-neutral application of the law across all offenses within this category.

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<sup>23</sup> Bharatiya Nyaya Sanhita,2023 (Act 45 of 2023), S.141.

<sup>24</sup> Bharatiya Nyaya Sanhita,2023 (Act 45 of 2023), S.143.

<sup>25</sup> Bharatiya Nyaya Sanhita,2023 (Act 45 of 2023), S.144.

Chapter 5 and some parts of chapter 6 of Bharatiya Nyaya Sanhita categorize a more pervasive standpoint to protect vulnerable sections of the society. Consolidating offenses against women and children in one chapter emphasizes their severity and strengthens the legal framework to address them. A dedicated chapter on offences against women and children also encourages and helps victims to report crimes, it shows a clear commitment to addressing these issues.

## **Challenges and civilian trust**

### **Specific challenges**

#### **1. Training and capacity building**

In the criminal delivery justice system, three major stakeholders play a vital role in the trial of the cases: judges, police personnel, and Advocates. Bharatiya Nyaya Sanhita,2023. This new change has been done in certain existing provisions, and some provisions were newly added. So, to fill the gap of legal intellect, specialized training is required for all stakeholders

India is a vast country in the realm of the legal sector, and merely some hours/ days of training is not appropriate; it requires proper training and updating in the proper Manner.

A low budget, uneven ponderance upon those aspects across states, and inadequate legal researcher support all create problems in training and capacity building.

#### **2. Judicial interpretation consistency**

Some provisions of Bharatiya Nyaya Sanhita,2023, are newly added. Different judges may apply the new interpretation of provisions in the absence of precedents. The evolution of case law in conjunction with a differing regional blend of legal opinion would significantly influence diverse rulings, hence depriving the system of its predictive and reliable values.

#### **3. Public awareness and access to justice**

There is a famous Latin maxim related to the Ignorance of the law: “Ignorantia juris non-excusat”. Ignorance of the law is no excuse. Indian society is not well aware of the law itself due to illiteracy and unawareness, so to access justice under BNS, 2023, public awareness and reliance on effective communication strategies are one of them.

The provision under BNS is too complicated for the layman to comprehend. Lack of access to legal aid and advisory services further impedes access to justice for marginalized communities of society.

#### **4. Marital rape exception**

Marital rape till yet, not criminalised. It restricts the scope of prosecution in the realm of sexual offences. Non-recognition of this issue promotes domestic violence<sup>26</sup>, and it leads to family imbalance, and in a broader perspective, it leads to societal imbalance too.

### **Conclusion**

Indian Penal Code, 1860, is superseded by BNS, 2023, which is a centric legal system under the new act. BNS is the first post-independence criminal code that turned the direction of India's criminal justice system.

Chapter-V of BNS deals with offences against women and children, and chapter -VI deals with offences affecting the Human Body. In BNS, several provisions were improved. The advancement of gender justice is more progressive. The latest provisions aim to resolve long-standing ambiguities and legal problems based on gender- sensitive semantics, increasing penalties and punishment for more serious acts and bordering the categories of crime.

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<sup>26</sup> The Protection Of Women From Domestic Violence Act, 2005 S.3

**LEGAL ASPECT OF BHARATIYA NYAYA SANHITA AND ITS ASPECTS ON  
INDIAN CRIMINAL JUSTICE**

**SUB-THEMES: GENDER JUSTICE AND PROTECTION OF VULNERABLE  
SECTIONS**

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**ABSTRACT:**

*The Indian Penal Code 1860 was replaced by Bharatiya Nyaya Sanhita 2023 that aims to streamline and modernize India's legal framework by consolidating existing laws into a cohesive structure. The BNS 2023 replaces several obsolete and redundant provisions of the Indian Penal Code with more relevant and progressive section. This not only streamlines the law but also removes outdated criminal offenses that were part of the colonial legal framework. BNS strengthens legal measures against gender-based violence that includes*

*sexual offences, domestic abuse and trafficking. The BNS has increased the punishments for dowry deaths and extended the ambit of protection in the case of harassment. The BNS includes several gender-neutral provisions. The paper highlights the BNS's potential to create a more equitable and inclusive legal framework while identifying implementation challenges and suggesting strategies to ensure effective enforcement.*

## **INTRODUCTION:**

The replacement of the Indian Penal Code with the Bharatiya Nyaya Sanhita (BNS) has an impact how law is taught and practised. The IPC, created in 1860, has been the backbone of criminal law in India. Despite being updated, it reflects its outdated origins and doesn't address many of today's legal challenges. The need for BNS comes from the urgency to modernise India's legal system to handle issues like cybercrime, environmental law, and human rights.

BNS brings in many important changes, such as clearer definitions of crimes, simpler procedures, and tougher penalties for crimes against women and children and also covers new areas such as cyber offenses and organised crime, and includes international human rights standards. The code also adopts modern ideas of restorative justice, focusing on rehabilitation and reformation instead of just punishment.

## **Background of the Bharatiya Nyaya Sanhita Bill 2023**

The Indian Penal Code (IPC), enacted in 1860 during British colonial rule, has long been the foundation of India's criminal justice system. Over the years, it has undergone numerous amendments to keep pace with evolving social, economic, and technological changes. Landmark Supreme Court rulings and Law Commission recommendations have led to significant reforms, such as the decriminalization of consensual same-sex relationships, adultery, and suicide attempts. Additionally, individual states have introduced region-specific modifications to address local concerns.

However, despite these changes, the IPC has struggled to effectively tackle emerging challenges like cybercrime, organized crime, and terrorism. Recognizing the need for a more modern legal framework, the Bharatiya Nyaya Sanhita (BNS) 2023 was introduced to replace the IPC. Reviewed by the Standing Committee on Home Affairs, the BNS retains core legal

principles while incorporating new offenses and stricter penalties to better reflect contemporary realities. This reform seeks to create a more responsive and efficient criminal justice system for present-day India.

### **OBJECTIVES:**

- To analyse the legal reforms under Bharatiya Nyaya Sanhita.
- To evaluate gender justice under Bharatiya Nyaya Sanhita
- To examine protections for vulnerable sections.

## **CHAPTER II**

### **KEY PROVISIONS FOR GENDER JUSTICE UNDER BHARATIYA NYAYA SANHITA**

#### **2.1 Need for Replacing IPC with BNS**

The Indian Penal Code (IPC), enacted in 1860, was outdated and inadequate for addressing today's complex legal issues. The BNS 2023 was necessary to modernize criminal law to better align with current social realities, technological advancements, and human rights standards.

**Outdated Provisions:** Many aspects of the IPC are outdated and do not reflect the current socio-economic and technological landscape.

**Colonial Legacy:** The IPC was drafted by the British for colonial administration. It often does not suit the needs of a modern, independent democracy.

**Complexity and Ambiguity:** Over time, the IPC has become cumbersome, with complex legal language that can be ambiguous and challenging to interpret.

**Victim-Centric Approach:** The IPC has traditionally been more offender-centric, with less focus on victim support and rehabilitation.

**Procedural Inefficiencies:** The IPC has contributed to procedural delays and backlogs in the court system. It necessitates a more efficient framework.

## **2.2 Highlights of the Bill**

The Bharatiya Nyaya Sanhita (BNS) retains most offences from the IPC. It adds community service as a form of punishment.

Sedition is no longer an offence. Instead, there is a new offence for acts endangering the sovereignty, unity and integrity of India.

The BNS adds terrorism as an offence. It is defined as an act that intends to threaten the unity, integrity, and security of the country, intimidate the general public or disturb public order.

Organised crime has been added as an offence. It includes crimes such as kidnapping, extortion and cyber-crime committed on behalf of a crime syndicate. Petty organised crime is also an offence now.

Murder by a group of five or more persons on grounds of certain identity markers such as caste, language or personal belief will be an offence with penalty of seven years to life imprisonment or death.

## **2.3 Strengthened Punishments for Crimes Against Women**

### 1. A Dedicated Chapter for Women's Protection (Chapter V, Sections 63–99)

For the first time, crimes against women are systematically categorized in a single chapter, making it easier to address these offenses effectively. This consolidation highlights the urgent need for legal safeguards and swift action against such crimes.

### 2. Strengthened Laws on Sexual Offenses

Rape (Section 63): The legal age of consent has been aligned with other laws, raising the age in Exception 2 of Section 375 from 15 to 18 years to better protect minors.

Gang Rape (Section 70): The definition of minor victims in gang rape cases has been expanded from 16 to 18 years, ensuring stronger legal protection for young survivors.

Voyeurism & Stalking (Sections 67 & 68): These offenses have been clearly defined, with harsher punishments for repeat offenders, addressing growing concerns about digital crimes and persistent harassment.

### 3. Stricter Measures Against Assault & Harassment

Outraging a Woman's Modesty (Section 74): Any act intended to violate a woman's dignity is met with severe penalties to serve as a deterrent.

Sexual Harassment (Section 75): The law explicitly penalizes unwanted physical contact, advances, or sexual remarks, ensuring increased punishment for repeat offenders.

### 4. Stronger Protections for Women in Marital & Domestic Spaces

Cruelty by Husband or Relatives (Section 80): Cases where women are driven to suicide or suffer serious harm due to domestic cruelty face strict legal action, reinforcing a zero-tolerance stance against domestic violence.

Dowry Death (Section 81): The BNS has strengthened penalties for dowry-related deaths, reinforcing efforts to eradicate this harmful practice.

### 5. Safeguarding Women's Reproductive Rights & Child Welfare

Causing Miscarriage Without Consent (Section 88): Unauthorized actions leading to miscarriage carry severe punishments, ensuring the protection of a woman's reproductive autonomy.

Exposure & Abandonment of Children (Section 89): Parents or guardians abandoning children under 12 years now face stringent legal consequences, ensuring better protection for vulnerable children.

### 6. New Offenses & Harsher Punishments

Introduction of New Crimes: The BNS recognizes 20 new offenses, including cases where sexual relations are obtained through fraud or false promises.

Harsher Sentences: 33 offenses now carry longer imprisonment terms, while fines have been increased for 83 offenses, reinforcing a strict stance against crimes targeting women.

## 7. A Clear Message: Women's Safety is a Top Priority

The government has emphasized that women's safety is non-negotiable, enacting tougher laws, including capital punishment for the most heinous crimes like rape. This legal overhaul ensures that justice is swifter and penalties are harsher, sending a strong message that crimes against women will not be tolerated.

By modernizing legal protections and making penalties more severe, the Bharatiya Nyaya Sanhita, 2023, takes a firm step toward ensuring justice, safety, and dignity for women across India.

## CHAPTER III

### VULNERABILITIES IN GENERAL JUSTICE FRAME WORK

The BNS retains and expands several provisions from the IPC to strengthen protections for women and vulnerable groups.

#### Protection of Women's Autonomy

##### 1. False Promise of Marriage (Sec. 69)

Criminalizes sexual intercourse under false promise of marriage, addressing an issue commonly used to exploit women.

##### 2. Desertion of Married Women (Sec. 85)

Penalizes husbands who abandon their wives without legal justification, ensuring greater accountability in marriages.

#### Strengthening Accountability for Gender-Based Violence

##### 1. Mob Lynching of Women (Sec. 103(2))

The BNS explicitly criminalizes mob lynching, recognizing gender-based lynching, honor killings, and public violence against women.

##### 2. Trafficking and Forced Labor (Sec. 153-155)

The BNS retains provisions criminalizing trafficking for sexual exploitation, forced labor, and organ removal, reinforcing protection for vulnerable groups.

### Protection of Vulnerable Sections Under Bharatiya Nyaya Sanhita (BNS), 2023

The Bharatiya Nyaya Sanhita (BNS), 2023) introduces several reforms aimed at ensuring justice for vulnerable sections of society, including children, Scheduled Castes (SCs) and Scheduled Tribes (STs), LGBTQ+ individuals, the elderly, and persons with disabilities. While BNS strengthens existing legal protections, some areas still require further reforms to provide holistic justice.

#### 1. Protection of Children: Addressing Abuse and Trafficking

Children are among the most vulnerable groups, facing dangers such as sexual abuse, human trafficking, forced labor, and domestic violence. BNS incorporates stricter punishments and aligns with the Protection of Children from Sexual Offences (POCSO) Act, 2012 to ensure comprehensive protection.

Under BNS, sexual offenses against children carry harsher penalties, with provisions emphasizing faster trials and stricter enforcement. Child trafficking, a major issue in India, is also addressed through stronger criminal provisions against organized trafficking networks. Furthermore, BNS enhances penalties for child labor exploitation, reinforcing existing child protection laws.

However, challenges remain in the effective implementation of laws, as police inaction, judicial delays, and underreporting of child abuse cases continue to hinder justice. Additionally, while BNS acknowledges digital crimes, it does not explicitly cover emerging threats like cyber-based child exploitation, online grooming, and child pornography.

#### 2. Safeguards for Scheduled Castes (SCs) and Scheduled Tribes (STs)

The SC and ST communities in India have historically faced caste-based discrimination, violence, and social exclusion. BNS retains and strengthens existing legal protections, ensuring stricter punishment for caste-based atrocities and integrating provisions from the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

BNS addresses caste-based crimes such as violence, discrimination, social boycotts, and honor killings. It strengthens punishments for hate crimes, including public humiliation, assault, and sexual violence against SC/ST individuals. Additionally, the law emphasizes fast-track trials for cases involving caste-based violence, ensuring quicker judicial outcomes.

Despite these legal provisions, implementation gaps persist, with low conviction rates, delayed legal proceedings, and police bias continuing to impact justice delivery. Fear of retaliation and social stigma often prevent victims from filing complaints, highlighting the need for stronger enforcement and legal awareness programs in marginalized communities.

### 3. Gaps in Recognition and Legal Protection for LGBTQ+ Individuals

While BNS introduces legal reforms for gender justice, it does not explicitly recognize or provide protection for LGBTQ+ individuals. The legal framework continues to be heteronormative, failing to address gender-based violence against transgender, non-binary, and queer individuals.

One major limitation of BNS is the lack of gender-neutral definitions in sexual violence laws. Crimes such as rape, sexual harassment, and domestic violence are still defined in a binary male-female context, leaving LGBTQ+ individuals without clear legal protection. Additionally, hate crimes against transgender persons remain underreported and under-prosecuted, as BNS does not specifically criminalize violence targeting gender minorities.

The Transgender Persons (Protection of Rights) Act, 2019, provides civil protections for transgender individuals, but it lacks strong enforcement mechanisms. Without explicit integration into BNS, transgender persons remain vulnerable to police harassment, discrimination, and social exclusion. Furthermore, the law does not provide same-sex couples with domestic violence protections, leaving LGBTQ+ relationships outside the purview of criminal justice protections.

To ensure true gender justice, future legal amendments must introduce gender-neutral provisions, criminalize hate crimes against LGBTQ+ individuals, and provide legal safeguards for same-sex relationships.

### 4. Protection of the Elderly and Persons with Disabilities

Elderly individuals and persons with disabilities (PWDs) often face financial exploitation, physical abuse, neglect, and social discrimination. BNS strengthens protections by introducing harsher penalties for crimes targeting these vulnerable groups.

The abuse and exploitation of elderly individuals, including fraud, physical harm, and forced property transfers, are now subject to stricter legal action under BNS. Additionally, the law reinforces criminal consequences for neglecting elderly parents, aligning with the Maintenance and Welfare of Parents and Senior Citizens Act, 2007.

For persons with disabilities, BNS integrates provisions from the Rights of Persons with Disabilities (RPWD) Act, 2016, strengthening legal protections against discrimination and violence. Crimes committed against individuals with disabilities, particularly sexual violence, workplace discrimination, and financial exploitation, carry harsher punishments under BNS. However, challenges in legal accessibility, judicial delays, and social stigma still affect justice delivery. Many PWDs face difficulties in filing complaints, highlighting the need for inclusive legal mechanisms, stronger enforcement, and improved accessibility to justice systems.

#### 5. Interaction of BNS with Special Protective Laws

BNS does not operate in isolation but interacts with several special protective laws that provide targeted justice for vulnerable groups. These laws enhance protections, strengthen enforcement mechanisms, and ensure marginalized communities receive comprehensive legal safeguards.

The Protection of Children from Sexual Offences (POCSO) Act, 2012, continues to be a crucial legal framework for preventing child sexual abuse, ensuring fast-track trials, and providing rehabilitation support for victims. BNS strengthens child protection by enhancing penalties for child-related crimes and integrating cyber-based offenses into criminal law.

The SC/ST (Prevention of Atrocities) Act, 1989, remains essential in tackling caste-based violence, discrimination, and honor crimes. BNS builds upon these provisions by increasing punishments for caste-motivated crimes, ensuring faster legal redressal for SC/ST victims, and improving law enforcement accountability.

Despite these advancements, legal gaps in LGBTQ+ protections and elderly welfare laws remain unaddressed. While BNS strengthens existing protective laws, a more inclusive legal framework is required to provide equal justice for all marginalized communities.

## **CHAPTER IV**

### **CHALLENGES AND IMPLEMENTATION CONCERNS**

Implementing the Bharatiya Nyaya Sanhita (BNS) effectively presents several challenges and concerns, which can be categorized into legal, administrative, and societal aspects.

#### **1. Practical Challenges in Implementation**

**Transition from IPC:** The shift from the Indian Penal Code (IPC) to the BNS requires extensive legal adjustments, including amending procedural laws and judicial interpretations. Courts and legal practitioners need to adapt to the new framework.

**Infrastructure & Resource Constraints:** Many courts and police stations in India face resource shortages, affecting the smooth implementation of new legal provisions.

**Uniformity in Enforcement:** Different states and law enforcement agencies may interpret provisions differently, leading to inconsistencies in application.

**Judicial Backlog:** The already overburdened judiciary may struggle with additional case complexities arising from new provisions, delaying justice.

**Integration with Other Laws:** Ensuring coherence between BNS and other laws such as the Bharatiya Nagarik Suraksha Sanhita (BNSS) and Bharatiya Sakshya Adhiniyam (BSA) is essential for a holistic legal transition.

#### **2. Need for Awareness, Training & Sensitization of Law Enforcement**

**Training Programs:** Judges, police officers, prosecutors, and legal professionals need comprehensive training on BNS provisions to ensure proper implementation.

**Public Awareness Campaigns:** Citizens, especially vulnerable groups, must be educated about their rights under the new law.

Sensitization on Gender & Vulnerable Groups: Special attention must be given to training law enforcement to handle cases related to gender-based violence and marginalized communities with empathy and efficiency.

Use of Technology: Digital tools and legal databases should be updated to help police and legal practitioners access BNS provisions quickly.

### 3. Balancing Stricter Laws with Safeguarding Individual Rights

Preventing Misuse of Stringent Provisions: Some provisions under BNS, such as harsher penalties for mob lynching and sedition, could be misused without proper safeguards.

Due Process & Fair Trial: Strict laws must align with constitutional rights, ensuring no infringement on personal liberties.

Safeguards Against Police Excesses: Mechanisms should be in place to prevent misuse of power by law enforcement agencies, including independent oversight.

Judicial Review & Legal Challenges: Courts must actively interpret BNS to ensure a balance between law enforcement and protection of fundamental rights.

## CHAPTER V

### CONCLUSION AND RECOMMENDATIONS

The Bharatiya Nyaya Sanhita (BNS), 2023, marks a turning point in India's criminal justice system, replacing colonial-era laws with a more modern framework. While the intention is to make justice more accessible, transparent, and efficient, the real test lies in how well these laws are implemented on the ground.

When we look at gender justice, the BNS introduces stricter punishments for crimes against women, ensuring that offenders face serious consequences. However, true justice goes beyond punishment—it requires a system that empowers survivors, prevents crimes, and fosters a culture of respect and equality. A gender-sensitive approach is crucial so that no one, regardless of gender, is left unprotected.

Similarly, for vulnerable sections of society—children, the elderly, marginalized communities, and people with disabilities—the law offers better safeguards. But legal provisions alone are not enough. If police responses remain insensitive, court cases drag on for years, and victims hesitate to report crimes out of fear or lack of awareness, then justice remains an unfulfilled promise.

While the BNS is a step in the right direction, we must ensure that it doesn't become just another law on paper. Its impact depends on how effectively it is enforced, how sensitively authorities handle cases, and how well society supports survivors and vulnerable individuals

## **RECOMMENDATIONS**

### **1. Justice Beyond the Courtroom**

Establish stronger support systems for survivors—free legal aid, counseling, and rehabilitation programs. Encourage community engagement to create safer spaces for women and marginalized groups. Set up helplines and digital complaint systems to make reporting easier and more accessible.

### **2. Making Laws Work for the People**

Ensure police and judiciary training to handle cases with sensitivity and efficiency.

Implement fast-track courts to avoid delayed justice, especially in cases of gender violence and crimes against children. Regularly review and update legal provisions to address evolving societal challenges.

### **3. Empowering the Vulnerable**

Launch legal awareness programs in schools, workplaces, and rural areas to educate people about their rights. Strengthen witness protection programs so that victims feel safe to testify. Improve accessibility for people with disabilities and marginalized communities in legal processes.

### **4. Accountability and Transparency**

Establish an independent monitoring body to track how the BNS is implemented and identify gaps. Involve civil society organizations, women's groups, and human rights advocates in assessing the impact of the law. Use data and technology to track case progress and hold law enforcement accountable.

In the end, laws alone cannot create a just society—it is our collective responsibility to uphold them in spirit and practice. The Bharatiya Nyaya Sanhita can be a powerful tool for change, but only if it is backed by awareness, enforcement, and a commitment to justice for all.

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