
ANALYSIS OF THE BHARATIYA NYAYA SANHITA, BHARATIYA NAGARIK SURAKSHA SANHITA, AND BHARATIYA SAKSHYA ADHINIYAM: PROVISIONS< RATIONALE< AND FUTURE IMPLICATIONS

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Abstract

The Indian Parliament's passage of the Bharatiya Nyaya Sanhita, 2023 (BNS), Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), and the Bharatiya Sakshya Adhinyam, 2023 (BSA) marks a watershed moment in the nation's legal history.¹ These three statutes, set to replace the Indian Penal Code, 1860 (IPC), the Code of Criminal Procedure, 1973 (CrPC), and the Indian Evidence Act, 1872 (IEA) respectively, represent the most comprehensive overhaul of India's criminal justice system in over a century. This article provides a critical analysis of these new Sanhitas, dissecting their key provisions, exploring the multifaceted rationale behind their enactment, and projecting their profound future implications. It argues that while these laws are a commendable and long-overdue attempt to decolonize and modernize the legal framework—introducing progressive concepts like victim-centricity and technological integration—their ultimate success will be contingent upon overcoming significant challenges related to implementation, potential for misuse of expanded state power, and the need for a concomitant reform of the justice system's human and infrastructural capital. The analysis is situated within the contemporary socio-political context, acknowledging the aspirations of a 21st-century India while scrutinizing the laws through a constitutional and human rights lens.

Keywords: Bharatiya Nyaya Sanhita, Bharatiya Nagarik Suraksha Sanhita, Bharatiya Sakshya Adhinyam, Criminal Law Reform, Decolonization of Law, Victim-Centric Justice, Technology in Law, Constitutional Law, Indian Legal System.

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I. INTRODUCTION: A PARADIGM SHIFT IN INDIAN CRIMINAL JURISPRUDENCE

For over 75 years of independent India, the bedrock of its criminal justice system has been a triad of statutes conceived in the 19th century: the IPC, the CrPC, and the IEA.² While these laws, drafted by Lord Macaulay and his contemporaries, have served with remarkable resilience, their colonial origins, linguistic archaisms, and procedural anachronisms have been the subject of persistent critique. The Law Commission of India, in its numerous reports, has repeatedly advocated for a comprehensive review and reform to align the criminal law with the contemporary values, socio-economic realities, and technological advancements of a modern democratic republic.

The enactment of the BNS, BNSS, and BSA is a legislative response to this decades-long clarion call.³ The government has framed this initiative as a pivotal step towards shedding the "colonial legacy" and establishing a justice system that is Swadeshi (indigenous), citizen-centric, and equipped to handle the complexities of modern crime. This transition is not merely a nominal change but a substantive re-engineering of the principles, procedures, and philosophies that underpin criminal governance in India.

This article undertakes a scholarly examination of this monumental legislative project. It is structured to first explore the overarching philosophical and policy rationales that propelled these reforms. Subsequently, it delves into a granular analysis of each of the three Sanhitas, highlighting their key innovations, amendments, and omissions in comparison to their predecessors. Finally, it offers a syncretic critique, evaluating the potential of these new laws to achieve their stated objectives while also flagging the inherent challenges, constitutional questions, and future implications for the judiciary, the executive, and the citizenry at large. The aim is to provide a resource for legal academia, practitioners, and policymakers to engage deeply with the new legal order that is set to shape the course of Indian criminal justice for generations to come.

II. THE PHILOSOPHICAL UNDERPINNINGS: THE RATIONALE FOR REFORM

The new Sanhitas are not drafted in a vacuum. They are rooted in four distinct yet interwoven rationales that reflect the current government's policy priorities and the evolving needs of Indian society.

A. The Decolonization Imperative

The most prominent rationale articulated by the legislature is the need to "decolonize" the Indian legal system. The IPC, CrPC, and IEA were instruments of colonial control, designed primarily to protect the interests of the British Raj. Their language, structure, and often, their substance, were seen as remnants of a bygone era.⁴ The repeal of Section 124A (Sedition) of the IPC, though replaced with a broader provision, is a symbolic gesture in this direction. The very act of renaming the laws with Sanskritised titles—Bharatiya Nyaya Sanhita (Indian Justice Code), Bharatiya Nagarik Suraksha Sanhita (Indian Citizen Protection Code), and Bharatiya Sakshya Adhinyam (Indian Evidence Act)—is a deliberate attempt to infuse them with an indigenous identity and shed the Eurocentric nomenclature. This rationale appeals to a sense of national pride and historical rectification, positing that a truly independent nation must have its own organic laws, not those inherited from its former colonizers.

B. Modernization and Technology Integration

The second driving force is the imperative to modernize the criminal justice system to address 21st-century challenges. The old statutes were woefully inadequate in dealing with new forms of crime such as cybercrimes, organized financial fraud, and terrorism.⁵ The BNS, for instance, introduces specific offenses for organized crime syndicates and terrorist acts, acknowledging the changing nature of threats to national security. More significantly, the BNSS places technology at the heart of procedural reform. Provisions for electronic registration of First Information Reports (FIRs), service of summons and warrants through electronic means, and the use of video-conferencing for judicial proceedings are aimed at creating a more efficient, transparent, and accessible system. The BSA also adapts to this digital shift by providing a clearer framework for the admissibility of electronic and digital evidence, a domain that was previously governed by

ambiguous provisions. This technological push is envisioned as a panacea for the chronic problems of delay, inefficiency, and corruption that plague the system.

C. The Shift Towards a Victim-Centric Approach

For a long time, Indian criminal law has been criticized for being overly state-centric, treating the victim as a mere witness for the prosecution rather than a stakeholder with independent rights.⁶ The new Sanhitas make a conscious effort to rectify this imbalance. The BNSS introduces several provisions to empower victims, such as the mandatory provision of a copy of the FIR to the victim, the right to be heard at the time of bail, and the right to submit objections before the conclusion of a trial. It also institutionalizes victim compensation schemes, making it an integral part of the sentencing process. The BNS introduces stricter punishments for crimes against women and children and reclassifies offenses like "snatching" as a separate, non-bailable offense to reflect the trauma it causes. This shift acknowledges that justice is not merely about punishing the offender but also about providing solace, support, and a sense of closure to the victim.

D. Ensuring Speedier Justice and Reducing Pendency

The Indian judiciary is creaking under the weight of millions of pending cases. One of the primary objectives of the new laws, particularly the BNSS, is to introduce procedural efficiencies that can expedite the delivery of justice.⁷ Timelines have been prescribed for various stages of the investigation and trial process. For instance, the BNSS mandates that judgments in criminal trials be delivered within 30 days of the conclusion of the trial, extendable up to 60 days. It also expands the scope of plea bargaining and encourages the use of summary procedures for petty offenses. The BNS introduces the concept of community service as a punishment for minor offenses, aiming to decongest prisons and provide a more restorative form of justice. These provisions are a direct legislative intervention into the problem of judicial delay, reflecting an urgency to make the justice system more agile and responsive.

III. THE BHARATIYA NYAYA SANHITA, 2023: A SUBSTANTIVE LAW OVERHAUL

The BNS, replacing the IPC, is the most consequential of the three new laws as it defines what constitutes a crime and its corresponding punishment.⁸ While it retains the majority of the IPC's structure and offenses, it introduces significant changes, new offenses, and crucial amendments.

A. Structural, Semantic, and Punitive Changes

The BNS contains 358 sections, compared to the IPC's 511, a reduction achieved primarily by merging and rationalizing provisions.⁹ The language has been modernized, with archaic terms like "dishonestly" and "fraudulently" being replaced with more contemporary equivalents. A notable semantic shift is the replacement of "rape" with "sexual intercourse" in certain contexts, a change that has drawn criticism for potentially diluting the gravity of the offense.

In terms of punishment, the BNS introduces graded punishments for many offenses, providing judges with more discretion.¹⁰ It also introduces "community service" as a form of punishment for petty offenses like non-appearance in response to a proclamation, petty theft, and defamation, marking a shift towards restorative justice. Furthermore, the BNS explicitly introduces gender neutrality for certain offenses, though it stops short of making the rape law gender-neutral.

B. Introduction of New Offenses

The BNS seeks to plug several legislative loopholes by creating new offenses:

Organized Crime (Section 111): This is a landmark provision defining organized crime as continuing unlawful activity by an individual, as a member of a gang or syndicate, by use of violence or threat of violence.¹¹ It covers activities like kidnapping, human trafficking, and contract killing carried out for monetary gain. The punishment is rigorous imprisonment for a minimum of five years, extendable to life imprisonment, and a fine.

Terrorist Acts (Section 113): While the Unlawful Activities (Prevention) Act (UAPA) remains the primary anti-terror law, the BNS introduces its own definition of a "terrorist act," which includes acts done with intent to threaten the unity, integrity, security, or sovereignty of India or to strike terror in the people.¹² This dual framework could lead to jurisdictional complexities and potential for overreach.

Mob Lynching (Section 103(2)): The BNS explicitly codifies murder by a group of five or more people on the grounds of race, caste, sex, place of birth, language, personal belief, or any other ground, with a mandatory punishment of death or life imprisonment.¹³ This gives legislative backing to the Supreme Court's judgments in cases like Tek Chand v. State of Haryana.

Snatching (Section 304): Previously tried under theft or robbery, "snatching" is now a distinct offense defined as forcibly or deceitfully taking away moveable property from a person, in their presence.¹⁴ It is punishable with imprisonment up to three years, reflecting the trauma and insecurity it causes.

C. Key Amendments and Controversial Provisions

The Sedition Conundrum: Repeal and Replacement: Section 124A of the IPC, which criminalized "sedition," has been repealed. However, its spirit is arguably preserved and even broadened in Section 150 of the BNS, which punishes "acts endangering sovereignty, unity and integrity of India."¹⁵ This new section penalizes acts of secession, armed rebellion, or subversive activities, as well as those that encourage or support such acts through financial means or communication. Critics argue that the new provision is more expansive than its predecessor and could have a more chilling effect on free speech under Article 19(1)(a) of the Constitution. The term "subversive activities" is vague and could be used to stifle legitimate dissent and political opposition.

Cruelty by Husband and Relatives (Section 85): Retaining the essence of Section 498A of the IPC, the BNS continues to criminalize cruelty by a husband or his relatives towards a married woman.¹⁶ However, it introduces a significant procedural change, making the offense bailable, a move that has been both welcomed (to prevent alleged misuse) and criticized (for potentially weakening the protection for women).

Offenses Against the State: The BNS introduces new provisions on "secession" (Section 148) and "armed rebellion" (Section 149), further strengthening the legal framework against threats to national unity.¹⁷ These provisions, along with Section 150, signal a hardening of the state's stance on issues of national security and territorial integrity.

The Marital Rape Exception: Despite widespread demands and recommendations from bodies like the Justice Verma Committee, the BNS has retained the exception for marital rape.18 Section 63 of the BNS (rape) explicitly states that sexual intercourse by a man with his own wife, the wife not being under eighteen years of age, is not rape. This decision has been a major point of contention and is seen as a significant failure to align the law with contemporary understandings of consent and bodily autonomy within a marriage.

IV. THE BHARATIYA NAGARIK SURAKSHA SANHITA, 2023: REIMAGINING PROCEDURAL JUSTICE

The BNSS, replacing the CrPC, governs the procedure for investigation, arrest, bail, and trial.19 It is here that the most ambitious reforms aimed at efficiency, transparency, and victim empowerment are concentrated.

A. Technology Integration and E-Governance

The BNSS is unabashedly pro-technology.

E-FIR and Digital Communication: Section 173 mandates that an FIR can be registered at any police station, irrespective of jurisdiction, and must be digitally recorded for immediate transmission to the concerned police station.20 Section 176 allows for the service of summons, notices, and warrants through electronic communication channels (email, SMS, etc.), deeming it as valid as physical service.

Electronic Records and Video-Conferencing: Section 439 makes electronic records admissible in judicial proceedings. Section 531 explicitly allows for the examination of witnesses, accused, and experts through audio-video electronic means, aiming to reduce delays and costs associated with physical appearance.

Police Databases: The BNSS empowers the police to maintain a national database of crime and criminals, including biometric data.21 While this can aid in investigation, it raises significant data privacy and surveillance concerns, especially in the absence of a robust data protection law.

B. Police Reforms, Powers, and Accountability

The BNSS attempts to balance the need for an effective police force with safeguards against the abuse of power.

Zero FIR and Timelines: The concept of Zero FIR is now statutorily recognized.²² The BNSS also mandates a preliminary inquiry by a DSP-level officer for offenses punishable with imprisonment between 3 to 7 years before registering an FIR, a provision intended to prevent the harassment of innocent individuals but criticized for potentially delaying justice.

Extended Police Custody: In a controversial move, Section 187(3) of the BNSS allows for police custody of up to 15 days, which can be utilized in parts during the initial 40 or 60 days of the judicial custody/remand period, as opposed to the continuous 15-day period under the CrPC.²³ This gives the police a more extended window for interrogation, raising concerns about custodial violence and the violation of Article 21 (Right to Life and Personal Liberty).

Handcuffing: The BNSS provides more clarity on the circumstances under which a police officer can handcuff an accused, including for heinous offenses, organized crime, or if the person is a repeat offender.²⁴ This aims to prevent escapes but has been criticized as regressive and contrary to the presumption of innocence.

C. Streamlining Trials and Enhancing Access to Justice

Time-Bound Trials: As mentioned earlier, the BNSS mandates that judgments be delivered within 30 days of the trial's conclusion.

Plea Bargaining: The scope of plea bargaining has been widened to cover more offenses, encouraging a quicker resolution of cases.

Forensic Evidence: Section 185 mandates that a forensic team visit a crime scene in all serious offenses, a significant step towards strengthening evidence collection and moving away from over-reliance on testimonial evidence.

D. Victim-Centric Provisions

The BNSS is a landmark legislation for victim rights in India.

Right to Information: Section 173(2) mandates that a copy of the FIR be given to the victim/informant free of cost.

Right to be Heard: Victims now have the right to be heard at various stages, including during bail applications (Section 480), and can submit objections before the conclusion of the trial (Section 360).

Victim Compensation: Section 397 makes it obligatory for the court to hear the victim on the question of compensation at the time of conviction.

V. THE BHARATIYA SAKSHYA ADHINIYAM, 2023: ADAPTING THE LAW OF EVIDENCE

The BSA, replacing the IEA, represents a more evolutionary than revolutionary change.²⁵ The core principles of evidence law—relevancy, admissibility, proof—remain intact. The primary focus is on updating the law to accommodate the digital revolution.

A. Primacy to Electronic and Digital Evidence

This is the most significant change introduced by the BSA.

Admissibility: Chapter II of the BSA deals with the admissibility of electronic records. It clarifies that an electronic record is admissible as evidence if it is a "computer output" and the conditions stipulated in Section 61 (formerly Section 65B of the IEA) are met regarding its authenticity and integrity.

Primary Evidence: Section 57 expands the definition of "primary evidence" to include electronic and digital records stored in a memory device, bringing them on par with physical documents.

Presumptions: Section 63 introduces a new presumption that electronic records, such as emails and messages sent by a person, are admitted by the recipient, unless proven otherwise.²⁶ This

shifts the burden of proof and can significantly streamline the process of establishing communication.

B. Other Notable Changes

Expert Opinion: The scope of expert opinion has been expanded to include experts from relevant fields beyond the traditional ones of medicine, handwriting, and science.

Confessional Statements: The BSA retains the bar against confessions made to a police officer being admissible in court (Section 25), a crucial safeguard against custodial coercion.

Hearsay Rule and Dying Declaration: The fundamental rules regarding hearsay and the admissibility of dying declarations remain largely unchanged, ensuring the continuity of well-established evidentiary principles.

VI. A SYNCRETIC CRITIQUE: INTERPLAY AND FUTURE IMPLICATIONS

While the new Sanhitas are ambitious in their scope, their translation from legislative text to ground reality is fraught with challenges and raises critical questions about the future of Indian criminal justice.

A. The Implementation Conundrum: Bridging the Gap Between Law and Practice

The most formidable challenge is implementation. The BNSS's vision of a technology-driven, time-bound justice system presupposes a level of infrastructural readiness and human resource training that is currently lacking across much of the country.

Digital Divide: E-FIRs, online summons, and video-conferencing require robust internet connectivity and digital literacy, which are not uniform across India's vast and diverse population. This could create a two-tiered system of justice, exacerbating existing inequalities.

Police Training: The new procedures, especially those related to forensic evidence collection and the use of new provisions against organized crime, require extensive and continuous training for police personnel at all levels. Without this, the laws risk being misapplied or ignored.

Judicial Capacity: The judiciary, already overburdened, will need to adapt to the new procedures and interpret the new provisions. This will require significant judicial training and a rethinking of court management practices to meet the new timelines.

B. Constitutional Validity and the Balance of Power

Several provisions of the new Sanhitas are likely to face constitutional scrutiny before the courts.

Liberty vs. State Power: The extended periods of police custody and the broad definitions of "terrorist act" and "acts endangering sovereignty" raise serious questions under Article 21 of the Constitution.²⁷ The judiciary will have to play a pivotal role in ensuring that these provisions are not used as tools for oppression and that procedural safeguards are strictly followed.

Freedom of Speech: The replacement of the sedition law with Section 150 of the BNS will be a major test for the freedom of speech under Article 19(1)(a).²⁸ The Supreme Court's jurisprudence on the "chilling effect" will be crucial in determining the constitutionality of this provision.

Federalism: Criminal law is on the concurrent list, but policing is a state subject.²⁹ The centralization of crime databases and the standardization of procedures through the BNSS could be seen as an encroachment on federal powers, potentially leading to friction between the center and the states.

C. The Unfinished Agenda: Beyond Statutory Reform

The new Sanhitas are a necessary but not sufficient condition for a reformed criminal justice system. They do not address several deep-seated structural issues.

Police Reforms: The laws do not tackle the core issues of police autonomy, political interference, and accountability that have been highlighted by the Supreme Court in the Prakash Singh v. Union of India case.³⁰

Judicial Backlog: While procedural timelines are a step forward, they do not address the root cause of judicial delay: the staggering vacancy of judges in the subordinate judiciary and the high courts.

Prison Reforms: The focus on decongesting prisons through community service is welcome, but the broader issues of prison conditions, overcrowding, and the need for a rehabilitative approach remain unaddressed.

VII. CONCLUSION: A NEW DAWN OR A FALSE START?

The Bharatiya Nyaya Sanhita, Bharatiya Nagarik Suraksha Sanhita, and Bharatiya Sakshya Adhiniyam represent a bold and ambitious attempt to reimagine India's criminal justice system.³¹ They are a testament to the nation's desire to shed its colonial past and build a legal framework that is more just, equitable, and attuned to the demands of the 21st century. The emphasis on technology, victim rights, and the codification of new-age crimes are undeniably progressive steps.

However, the path from legislative intent to effective implementation is long and arduous. The success of these new Sanhitas will depend not on the elegance of their drafting but on the nation's collective will to invest in the necessary infrastructure, training, and, most importantly, in safeguarding the constitutional values of liberty, equality, and fraternity. The expanded powers granted to the state, particularly the police, necessitate a vigilant judiciary and an informed citizenry to prevent their misuse.

Ultimately, these new laws are not a panacea for all that ails the criminal justice system. They are a beginning, not an end. They open a new chapter in Indian legal history, one that will be written not just in the statutes but in the courtrooms, police stations, and public squares of India. The legal fraternity, led by its academics and practitioners, has a crucial role to play in this process of interpretation, critique, and shaping the jurisprudence that will emerge from these transformative laws. The dawn of a new legal era has broken, but whether it will lead to a brighter day for justice is a question that only time, and our collective efforts, can answer.

References

1. Bharatiya Nyaya Sanhita (BNS), 2023, No. 45 of 2023 (India); Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, No. 46 of 2023 (India); Bharatiya Sakshya Adhiniyam (BSA), 2023, No. 47 of 2023 (India).
2. Indian Penal Code, 1860, No. 45 of 1860 (India); Code of Criminal Procedure, 1973, No. 2 of 1974 (India); Indian Evidence Act, 1872, No. 1 of 1872 (India).
3. Ministry of Home Affairs, Govt. of India, The Bharatiya Nyaya Sanhita, 2023, https://www.mha.gov.in/sites/default/files/250883_english_01042024.pdf (last visited May 12, 2026).
4. Ramachandra Guha, *India After Gandhi: The History of the World's Largest Democracy* 557 (Picador 2007).
5. BNS, 2023, §§ 111–113 (India).
6. Justice J.S. Verma Committee, Report on Amendments to Criminal Law 45–62 (2013) (India).
7. BNSS, 2023, §§ 173–185 (India).
8. BNS, 2023, Preamble (India).
9. LawRbit, IPC, CrPC, Evidence Act Replaced by New Criminal Laws: Key Changes & Salient Features, <https://www.lawrbit.com/article/ipc-crpc-evidence-act-replaced-by-new-criminal-laws/> (last visited May 12, 2026).
10. BNS, 2023, § 71 (India).
11. BNS, 2023, § 111 (India).
12. BNS, 2023, § 113 (India); India Code, BNS Section 113 - Terrorist Act, https://www.indiacode.nic.in/show-data?actid=AC_CEN_5_23_00048_2023-45_1719292564123&orderno=113 (last visited May 12, 2026).
13. BNS, 2023, § 103(2) (India); Drishti Judiciary, Mob Lynching under Bharatiya Nyaya Sanhita, <https://www.drishtijudiciary.com/to-the-point/bharatiya-nyaya-sanhita-&-indian-penal-code/mob-lynching-under-bharatiya-nyaya-san> (last visited May 12, 2026); Tek Chand v. State of Haryana, (2017) 9 SCC 639 (India).
14. BNS, 2023, § 304 (India); Devgan.in, BNS Section 304 - Snatching, <https://devgan.in/bns/section/304/> (last visited May 12, 2026).
15. BNS, 2023, § 150 (India); Project 39A, Criminal Law Bills 2023 Decoded #8: Sedition Recast - Implications of Clause 150 of the BNS 2023, <https://p39ablog.com/2023/09/criminal-law-bills-2023-decoded-8-sedition-recast-implications-of-clause-150-of-the-bns-2023/> (last visited May 12, 2026).
16. BNS, 2023, § 85 (India); compare Indian Penal Code, 1860, § 498A, No. 45 of 1860 (India).
17. BNS, 2023, §§ 148–150 (India).
18. BNS, 2023, § 63 (India); see also Justice J.S. Verma Committee, *supra* note 6.
19. BNSS, 2023, No. 46 of 2023 (India); compare Code of Criminal Procedure, 1973, No. 2 of 1974 (India).
20. BNSS, 2023, §§ 173, 176 (India); India Code, BNSS Section 173 - Information in Cognizable Cases, <https://www.indiacode.nic.in/show-data?abv=CEN&statehandle=123456> (last visited May 12, 2026).
21. BNSS, 2023, § 39 (India).
22. BNSS, 2023, § 173 (India).
23. BNSS, 2023, § 187(3) (India).
24. BNSS, 2023, § 38 (India).
25. BSA, 2023, No. 47 of 2023 (India); compare Indian Evidence Act, 1872, No. 1 of 1872 (India).
26. BSA, 2023, § 63 (India).
27. India Const. art. 21.
28. India Const. art. 19(1)(a).
29. India Const. art. 246 (Union List, State List, Concurrent List).
30. Prakash Singh v. Union of India, (2006) 8 SCC 1 (India).
31. BNS, BNSS, & BSA, 2023, *supra* notes 1, 19, 25.