KMC COLLEGE OF LAW
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National Seminar Journal on

REFORMING THE CRIMINAL JUSTICE SYSTEM

Evaluating the Efficacy of India's New Criminal Laws

On 13th & 14th February, 2026

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REFORMING THE CRIMINAL JUSTICE SYSTEM

Evaluating the Efficacy of India's New Criminal Laws

EDITED BY,

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ABOUT THE SEMINAR

The criminal justice system of India has undergone a historic transformation with the enactment of three new legislations — the Bharatiya Nyaya Sanhita, 2023 (BNS), the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), and the Bharatiya Sakshya Adhiniyam, 2023 (BSA) — replacing the colonial-era Indian Penal Code, 1860; the Code of Criminal Procedure, 1973; and the Indian Evidence Act, 1872, respectively. These enactments signify a clear shift from colonial legal philosophy to a framework purportedly better suited to the needs of a democratic, constitutional, and technologically advanced India. The reforms have been introduced with the stated aim of ensuring rapid justice, citizen focused approaches, and technological integration into the criminal process.

Replacing laws that are over a century old is expected to bring greater efficiency, transparency, and fairness. However, the introduction of these comprehensive legislative tools raises several important questions about necessity, feasibility, effectiveness, and whether the legal system is prepared for their successful implementation. Given the scale of change and its widespread effects on all stakeholders — from the judiciary and law enforcement agencies to the Bar, academia, and the public — it is essential to establish a scholarly platform for discussion and analysis.

A national seminar that unites experts from various fields can play a vital role in exploring the conceptual foundations, structural consistency, and practical viability of these reforms. Recognising this academic and societal responsibility, KMC College of Law organised a Two-Day National Seminar on "**REFORMING THE CRIMINAL JUSTICE SYSTEM: Evaluating the Efficacy of India's New Criminal Laws**", which aims to provide an intellectually demanding platform for reflection, critique and constructive dialogue on the transformative potential of India's new criminal law regime.

ABOUT KMC COLLEGE OF LAW

The College is nestled in the city of Tirupur. Tirupur is a city in the state of Tamil Nadu, with a population of 45 lakh and home to around 600 schools. KMC College of Law is the first and only institution in the district to provide for graduation in law. KMC College of Law, Tirupur is a legal institution committed to academic excellence and practical exposure. Affiliated with TamilNadu Dr. Ambedkar Law University, Chennai and approved by the Bar Council of India, the college nurtures aspiring legal professionals with a balance of theoretical foundations and courtroom skills. Situated in the textile hub of South India, the institution believes in the transformative power of legal education and advocacy.

The College is established with a mission to inspire, innovate, nurture and reinvigorate in the future lawyers of the institution, what it takes to be a true cosmopolitan, an efficient lawyer, a capable human being, and one who aims to better the lives of the unfortunate. Further, it has a mission to pioneer legal education reforms, and to anchor the transformation of the Indian legal system through research and policy interventions.

KMC College of Law endeavors to secure all-round contribution for the betterment of the field of law, to create world-class professionals, to produce committed academicians and law reformers, to train justice dispensers and invigorate community crusaders and, to create a strong watershed of new and upcoming expertise in law relating to business and corporate matters. The College derives its strength and ethos from the highly qualified and dedicated faculty.

Students have the opportunity to participate in moot courts and debates at a competitive level. The numerous guest lectures, events and discussions will help the students acquire the required skills and valuable networks. This is further enhanced by various committees that will instil street-smartness and other managerial skills in the students.

KMC College of Law Spread across a sprawling 13-acre campus in Tirupur, the College offers an airconditioned, Wi-Fi-enabled environment with world-class amenities-including smart classrooms, an extensive library, student housing, and other facilities. Equipped with all the necessary facilities and an effective team to utilise the same for their best advantage, the College is committed to serve as a breeding ground for future leaders.

KMC College of Law, Tirupur, proudly marked a milestone in its academic journey by hosting its **First National Seminar on "Artificial Intelligence and the Law: Ethical and Legal Implications" on October 5, 2024**. The event brought together eminent legal minds, scholars, and technology experts to explore the evolving relationship between AI and the justice system. With thought-provoking discussions and engaging sessions, the seminar served as a dynamic platform for participants to delve into how technology is reshaping legal ethics, governance, and accountability in the digital era. Carrying forward its legacy of excellence in legal education, KMC College of Law, Tirupur, successfully organized its **First National Moot Court Competition from September 25 to 27, 2025.**

The competition witnessed an enthusiastic participation of 54 teams from across the nation, all vying to showcase their advocacy, research, and analytical skills before distinguished judges and legal luminaries. The event not only celebrated the spirit of legal debate and courtroom decorum but also reflected the college's commitment to nurturing the next generation of confident, competent, and ethically grounded legal professionals.

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Professor Srikrishna Deva Rao
Vice Chancellor

22-04-2026

Foreword

It is with immense pleasure and a deep sense of academic satisfaction that I write this Foreword to the proceedings of the **Second National Seminar on "Reforming the Criminal Justice System: Evaluating the Efficacy of India's New Criminal Laws,"** organised by KMC College of Law, Tirupur, on the 13th and 14th of February 2026. This scholarly initiative assumes particular significance at a transformative juncture in India's legal history, as the nation consciously transitions from its colonial criminal law legacy to a modern, comprehensive, and indigenous legal framework embodied in the Bharatiya Nyaya Sanhita (BNS), the Bharatiya Nagarik Suraksha Sanhita(BNSS), and the Bharatiya Sakshya Adhiniyam (BSA), 2023.

The criminal justice system constitutes the very foundation on of a constitutional democracy, functioning as the principal mechanism through which the rule of law is preserved, rights are protected, and justice is administered. In this context, the recent overhaul of India's criminal laws is not merely a legislative reform, but a profound structural and philosophical reorientation. It therefore becomes imperative for the academic and professional community to engage in rigorous, informed, and critical discourse on the implications, challenges, and possibilities arising from such a transition. The seminar, the proceedings of which are encapsulated in this volume, admirably fulfilled this objective by providing a dynamic and intellectually stimulating platform that brought together eminent jurists, distinguished academicians, seasoned practitioners, policymakers, and aspiring legal scholars.

I had the privilege of delivering the keynote address on 13 February 2026 the evolution of criminal law in India. Drawing upon landmark developments such as the *Mathura* and *Nirbhaya* cases, I sought to illustrate how earlier reforms were largely incremental in nature, whereas the present legislative shift represents a comprehensive and systemic transformation of the criminal justice framework. I also emphasised the growing importance of scientific investigation, forensic methodologies, and technological integration, while underscoring that the true success of these reforms would ultimately depend upon effective implementation and seamless institutional coordination.

The present volume, comprising carefully selected research articles presented during the seminar, stands as a testament to the depth, diversity, and contemporary relevance of scholarship in the field of criminal justice reform. The contributions engage with a wide spectrum of issues, including investigative processes, evidentiary standards, procedural innovations, trial mechanisms, sentencing philosophies, and correctional practices, all the while remaining anchored in the constitutional values of liberty, dignity, and fairness. These articles not only identify critical challenges but also advance thoughtful, evidence-based recommendations aimed at ensuring that legislative reform translates into meaningful and effective justice.

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The plenary and technical sessions, provided an engaging and participatory platform for scholars, practitioners, and students to present their research and engage in constructive dialogue. The themes explored ranged from evidentiary challenges and procedural reforms to cybercrime, institutional preparedness, and emerging legal concerns. The active participation and critical engagement witnessed in these sessions reaffirm the indispensable role of academic forums in shaping legal discourse and influencing reform.

The seminar was enriched by eminent experts who examined both theoretical and practical dimensions of criminal law reform. *Dr. Amar Kumar Pandey*, IPS, Former Director General of Police of Karnataka highlighted the need to balance deterrence with reformative justice grounded in constitutional values. He also presented reflection on victim-centric justice. He provided participants with a holistic and critically informed understanding of the evolving criminal justice landscape. My friend, *Prof. P. Madhava Soma Sundaram* distinguished between 'efficiency' and 'efficacy', emphasising that the success of the new criminal laws depends on their ability to deliver substantive justice and strengthen public confidence.

I place on record my sincere appreciations to *Prof. (Dr.) M. S. Soundara Pandian, Principal* and *Ms. Gnana Varshini, Secretary* both deserve special commendation for their vision and academic commitment. I extend my heartfelt congratulations to the dedicated efforts of the seminar organising committee, faculty members, and student volunteers are equally praiseworthy, as their collective endeavour has not only ensured the success of the event but has also culminated in the production of this significant scholarly work.

The twenty-four research papers included in this volume have been thematically organised in alignment with the core themes of the seminar. This is a valuable addition to contemporary legal literature and will undoubtedly serve as an important resource for academicians, researchers, practitioners, students, and policymakers. It is hoped that the insights, analyses, and recommendations contained herein will contribute meaningfully to policy formulation, judicial interpretation, and future research, thereby strengthening the effectiveness, fairness, and humaneness of India's criminal justice system.

It is my earnest hope that this publication will inspire continued research, dialogue, and reform in the ongoing pursuit of a criminal justice system that is not only efficient, but also just, humane, and constitutionally grounded.

Prof. (Dr.) Sri Krishna Deva Rao,
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EDITORIAL NOTE

In an era of legal transformation, reforming the criminal justice system remains one of our most urgent tasks. To engage with this need, KMC College of Law, Tirupur, hosted the National Seminar on **"Reforming the Criminal Justice System: Evaluating the Efficacy of India's New Criminal Laws"** on **13th and 14th February 2026.**

The seminar drew together legal experts, academicians, practitioners, policymakers, and research scholars to examine the new criminal laws. Discussions spanned procedural efficiency, fundamental rights, victim-centric justice, institutional accountability, and the role of technology in adjudication, marked by intellectual rigor and critical insight.

It is with great pride that we present this e-journal, compiling research papers presented at the National Seminar and selected by the panel of resource persons after incorporating their suggestions for improvement. The contributions critically assess policing, investigation, evidentiary standards, trials, sentencing, and correctional mechanisms, offering pathways to ensure that reform delivers fairness, transparency, and meaningful access to justice.

We thank our keynote speakers, paper presenters, participants, and the organizing committee for making this dialogue possible. We trust that this volume will serve as a valuable resource for scholars, practitioners, and policymakers alike, and will continue to inspire informed debate, critical inquiry, and progressive reform in the realm of criminal justice.

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THEME I: RATIONALE AND NEED FOR REFORM

CONSTITUTIONAL MORALITY AND THE INDIANISATION OF CRIMINAL LAW

Ms. K Kowsalya [1]

INTRODUCTION

Constitutional morality forms a foundational principle in India's constitutional framework, emphasising adherence to democratic values, institutional integrity, and protection of individual rights. Dr. B.R. Ambedkar highlighted the importance of constitutional morality in ensuring that governance remains guided by constitutional principles rather than temporary public opinion or majoritarian impulses. This concept becomes particularly significant in criminal law, where state authority directly affects personal liberty and human dignity.

India's criminal justice system has recently undergone significant legislative reform with the introduction of the Bharatiya Nyaya Sanhita, Bharatiya Nagarik Suraksha Sanhita, and Bharatiya Sakshya Adhiniyam, 2023. These statutes replace colonial-era laws such as the Indian Penal Code, Code of Criminal Procedure, and Indian Evidence Act. The transition represents an effort to modernise criminal law and align it with constitutional principles and contemporary societal needs.

The idea of Indianisation in criminal law extends beyond symbolic changes and seeks to create a justice system that reflects constitutional values, fairness, and accountability. Constitutional morality requires that criminal law operate in harmony with fundamental rights, ensuring proportionality, due process, and equality before law. Modern reforms also emphasise victim-centric justice, technological integration, and time-bound procedures aimed at improving efficiency while safeguarding liberty.

This paper examines the extent to which criminal law reforms reflect constitutional morality and whether Indianisation contributes to a more just and responsive legal framework. It also evaluates the compatibility of the new criminal laws with fundamental rights and analyses public perception regarding these reforms.

[1] Student, Government Law College, Viluppuram

This sweeping reform represents more than legislative housekeeping—it signals India's bold stride towards decolonisation and constitutional authenticity. Constitutional morality demands that criminal law harmonise seamlessly with Part III -fundamental rights, ensuring state power operates through fairness, due process, and proportionality. Gone are the days of purely punitive justice; today's framework embraces rehabilitation and restoration, reflecting the Constitution's core promises of justice, liberty, equality, and fraternity. The new statutes prioritise victim-centric approaches, mandate time-bound investigations.

OBJECTIVES OF THE PAPER

To examine the colonial legacy of Indian criminal law in light of constitutional morality.

1. To analyse constitutional morality as the basis for criminal law reform in India.
2. To study the scope and significance of Indianisation of criminal law.
3. To assess the compatibility of the BNS, BNSS, and BSA, 2023 with fundamental rights.
4. To evaluate criminal law reforms from a victim-centric and rights-based perspective.

RESEARCH METHODOLOGY

This paper adopts an empirical research methodology based on primary and secondary data. Primary data is collected through questionnaires and interviews with advocates, academicians, law students, and the general public. Secondary sources include statutes, constitutional provisions, judicial decisions, books, and research articles. The study uses a qualitative and descriptive approach to analyse stakeholder perceptions. The methodology aims to assess criminal law reforms through the lens of constitutional morality and Indianisation.

SOURCES OF DATA

This is a quantitative research and thus primary survey as well as secondary research data is looked into and critically analysed.

- Primary source - Interview and google questionnaire
- Secondary source – Books, Journals and articles

HISRORICAL CONTEXT AND COLONIAL LEGACY:

India's criminal law system remained deeply shaped by colonial administration for over 160 years, with the Indian Penal Code, 1860, drafted by Lord Macaulay, embodying Victorian moral standards and imperial administrative convenience rather than indigenous legal traditions or the transformative values later enshrined in the Indian Constitution, resulting in persistent tensions between colonial criminal provisions and constitutional morality, particularly in matters affecting personal liberty, human dignity, and culturally rooted practices. This dissonance between colonial legality and constitutional legitimacy was judicially acknowledged by the Supreme Court in *Navtej Singh Johar v. Union of India*,[2] where the Court emphatically held that constitutional morality must prevail over popular or societal morality whenever fundamental rights are implicated, and consequently decriminalised consensual homosexual conduct by striking down the colonial-era interpretation of Section 377 of the IPC. The decision exemplifies the judiciary's role in dismantling archaic criminal provisions rooted in colonial morality and realigning criminal law with constitutional values of equality, autonomy, and dignity, thereby marking a decisive shift from inherited colonial frameworks towards a criminal justice system grounded in constitutional morality.

CONSTITUTIONAL MORALITY AS THE GUIDING PRINCIPLE OF CRIMINAL LAW REFORM

Constitutional morality operates as the normative foundation for criminal law reform by ensuring that the content, interpretation, and application of criminal laws are guided by the values embedded in the Constitution rather than by transient public opinion, political expediency, or inherited colonial assumptions. In the Indian context, where criminal law directly mediates the relationship between the individual and the coercive power of the State, constitutional morality functions as a critical restraint against arbitrariness, excess, and abuse of authority. Rooted in Dr. B.R. Ambedkar's vision, it demands fidelity to principles such as human dignity, personal liberty, equality before the law, and due process, which are constitutionally guaranteed under Articles 14 and 21[3]. As a guiding principle of reform,

[2] Supra
[3] M.P. Jain, constitutional law of India (8th ed. 2018) (Lexis Nexis)

constitutional morality requires a re-evaluation of criminalisation, punishment, and procedure to ensure proportionality, fairness, and reasonableness, thereby rejecting purely retributive approaches that disregard the reformative and rehabilitative objectives of criminal justice.

It also mandates that legislative reforms align with the transformative character of the Constitution by dismantling colonial-era provisions and practices that perpetuate discrimination or moral paternalism. In this sense, constitutional morality does not merely influence criminal law reform at a theoretical level but serves as an operational standard against which the legitimacy of new criminal statutes, procedural safeguards, and evidentiary rules must be tested, ensuring that the criminal justice system evolves as an instrument of constitutional governance committed to justice, liberty, and the rule of law rather than as a mechanism of social control driven by majoritarian morality.

COLONIAL LEGACY OF INDIAN CRIMINAL LAW AND THE NEED FOR DE-COLONISATION

The colonial legacy of Indian criminal law is deeply rooted in the objectives of imperial governance, where legal codes such as the Indian Penal Code, 1860 were designed primarily to maintain order, protect colonial authority, and regulate subject populations rather than to safeguard individual rights or reflect indigenous social realities. Drafted in accordance with Victorian moral standards and administrative convenience, colonial criminal laws often prioritised state control over personal liberty and treated criminal justice as an instrument of discipline rather than justice. After independence, the continued operation of these laws within a constitutional democracy created an inherent contradiction, as colonial-era provisions and procedures frequently conflicted with the constitutional guarantees of equality, dignity, and due process.

The need for de-colonisation of criminal law, therefore, arises from the imperative to dismantle legal structures and doctrines that are incompatible with India's constitutional ethos and lived social conditions. De-colonisation in this context does not imply a rejection of legal continuity or universal principles of criminal jurisprudence, but rather a critical re-examination of inherited laws to ensure their alignment with constitutional morality, democratic accountability, and contemporary notions of justice. By replacing colonial codes with

indigenised criminal statutes, the reform process seeks to transform criminal law from a tool of imperial control into a constitutionally grounded system that respects individual rights, addresses societal needs, and reflects India's status as a sovereign, democratic republic governed by the rule of law.

INDIANISATION OF CRIMINAL LAW: MEANING, SCOPE, AND OBJECTIVES

Indianisation of criminal law refers to the conscious process of reshaping India's criminal justice framework to reflect indigenous social realities, constitutional values, and democratic aspirations, while moving away from the colonial assumptions and priorities that historically shaped criminal legislation. In terms of meaning, it signifies more than the replacement of colonial terminology or symbols; it involves a substantive reorientation of criminal law to ensure that its objectives, structures, and procedures are rooted in constitutional morality, respect for human dignity, and the protection of fundamental rights. The scope of Indianisation extends across substantive criminal offences, criminal procedure, and evidentiary rules, requiring that definitions of crime, modes of investigation, standards of proof, and forms of punishment are fair, proportionate, and responsive to contemporary social conditions.

Its objectives include aligning criminal law with the transformative vision of the Constitution, enhancing accessibility and inclusiveness within the justice system, strengthening victim-centric and restorative approaches, and ensuring accountability of state authorities in the exercise of coercive power. Indianisation also seeks to balance societal interests with individual liberties by embedding due process, transparency, and procedural fairness at every stage of the criminal process. Ultimately, the Indianisation of criminal law aims to create a criminal justice system that is not only nationally contextualised and culturally sensitive but also constitutionally legitimate, democratic in character, and capable of delivering justice in a manner consistent with the ideals of liberty, equality, fraternity, and the rule of law.

COMPATIBILITY OF NEW CRIMINAL LAWS (BNS, BNSS, BSA) WITH FUNDAMENTAL RIGHTS

The compatibility of the Bharatiya Nyaya Sanhita, Bharatiya Nagarik Suraksha Sanhita, and Bharatiya Sakshya Adhiniyam, 2023 with fundamental rights is essential for assessing the legitimacy of India's recent criminal law reforms. These statutes must function in conformity with Part III of the Constitution, particularly Articles 14, 19, and 21, which safeguard equality, personal liberty, and procedural fairness. While the reforms aim to reduce arbitrariness and delay through time-bound processes, victim-oriented measures, technological integration, and improved procedural clarity, their constitutional validity ultimately depends on their ability to prevent excessive state control over arrest, detention, investigation, and evidence. The principles of reasonableness and proportionality remain central to evaluating new offences and procedures, ensuring that efficiency does not undermine liberty or dignity. Consequently, the real test of compatibility lies in their application and judicial interpretation, which must consistently uphold fundamental rights and constitutional morality.

VICTIM-CENTRIC JUSTICE AND CONSTITUTIONAL VALUES

Victim-centric justice represents an important evolution in India's criminal justice system by reorienting its focus from an offender-centric and state-dominated model towards one that meaningfully recognises the rights, interests, and dignity of victims, in consonance with constitutional values. Traditionally, criminal law treated crime primarily as an offence against the State, often marginalising the victim's role beyond that of a witness, which resulted in inadequate attention to victim compensation, participation, and psychological restoration. A constitutional approach to victim-centric justice draws legitimacy from the guarantees of dignity, equality, and personal liberty under Articles 14 and 21, requiring that victims are treated with fairness, respect, and sensitivity throughout the criminal process.

The incorporation of victims' rights, such as timely access to information, protection from secondary victimisation, compensation, and opportunities for participation in proceedings, reflects the constitutional mandate to deliver substantive justice rather than merely procedural outcomes. Victim-centric justice also aligns with the broader constitutional goal of restorative justice by seeking to repair the harm caused by crime, address the needs of victims, and promote social reconciliation without undermining the rights of the accused. In the context of contemporary criminal law reforms, embedding victim-centric mechanisms

within investigation, prosecution, and sentencing processes signifies an effort to balance individual rights with societal interests, ensuring that the criminal justice system functions not only as an instrument of punishment but also as a constitutionally grounded framework for healing, accountability, and inclusive justice.

ROLE OF JUDICIARY IN ADVANCING CONSTITUTIONAL MORALITY IN CRIMINAL LAW

The judiciary has played a pivotal role in advancing constitutional morality within criminal law by interpreting statutes and procedures through the prism of fundamental rights, human dignity, and substantive justice, thereby transforming the criminal justice system from a rigid, state-centric framework into a more rights-oriented and victim-sensitive mechanism. Through its constitutional mandate, the Supreme Court of India has consistently acted as a counter-majoritarian institution, ensuring that criminal law does not merely reflect social prejudices or administrative convenience but conforms to the constitutional values of liberty, equality, and justice. In *Maneka Gandhi v. Union of India*,[4] the Court expanded the scope of Article 21 by reading fairness, reasonableness, and due process into law, laying the foundation for humane criminal procedure. This approach was further strengthened in *Bodhisattwa Gautam v. Subhra Chakraborty*,[5] where the Court recognised the right of rape victims to interim compensation, thereby affirming that victim dignity and restitution are integral to constitutional justice. In *State of Gujarat v. Hon'ble High Court of Gujarat*[6], the Court acknowledged the need for victim participation and sensitivity within criminal proceedings, reinforcing the constitutional obligation to balance the rights of the accused with those of victims.

The decision in *Laxmi v. Union of India,*[7] further demonstrated judicial commitment to victim-centric justice by directing compensation, rehabilitation, and regulatory measures for acid attack survivors, grounding such relief in Articles 14 and 21. Similarly, in *Navtej Singh Johar v. Union of India*, the Court upheld constitutional morality over popular morality, emphasising dignity and autonomy, which indirectly strengthened the rights of victims of

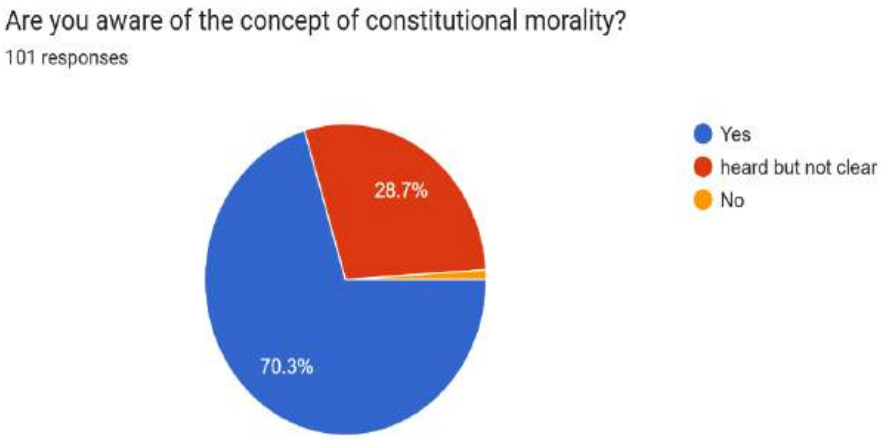
[4] (1978) 1 SCC 248
[5] (1996) 1 SCC 490
[6] AIR (1998) 7 SCC 392
[7] AIR (2014) 4 SCC 427

discriminatory criminalisation. Collectively, these judicial interventions illustrate how courts have operationalised constitutional morality to reshape criminal law, ensuring that victim-centric justice is not treated as a discretionary policy choice but as a constitutional imperative embedded within the broader framework of human dignity, fairness, and the rule of law.

CHALLENGES IN IMPLEMENTING CONSTITUTIONAL MORALITY

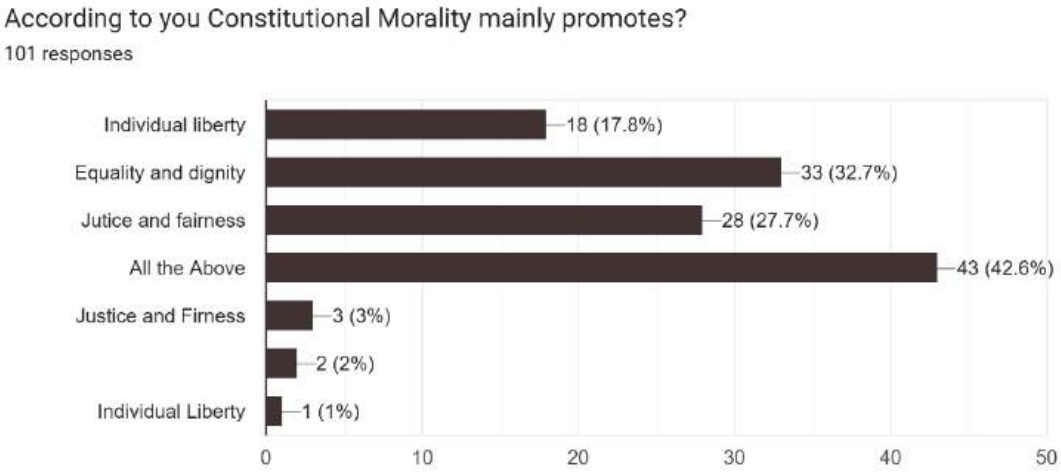
1. **Majoritarian social Morality**
   Popular moral beliefs often influence law enforcement and policy decisions, leading to resistance against constitutional protections for minorities and marginalised groups.
2. **Discretionary Abuse of State Power** Wide discretionary powers in arrest, investigation, and prosecution create scope for arbitrariness, undermining constitutional morality.
3. **Lack of Constitutional Awareness Among Enforcement Agencies** Police and lower-level officials often lack adequate training in constitutional values, resulting in mechanical or rights-insensitive implementation of laws.
4. **Judicial Delays and Backlog of Cases** Prolonged trials dilute the practical effect of constitutional safeguards such as speedy trial and fair procedure.
5. **Inconsistent Judicial Interpretation** Divergent approaches by different courts can weaken uniform application of constitutional morality in criminal law.
6. **Political and Executive Interference** Influence over investigations and prosecutions compromises institutional independence and constitutional accountability.
7. **Weak Victim Support and Rehabilitation Mechanisms** Inadequate infrastructure for victim protection, compensation, and counselling undermines dignity-based justice.
8. **Technological and Digital Divide** Increased reliance on technology in criminal procedures may exclude vulnerable populations lacking access or digital literacy.
9. **Gap Between Law and Implementation** Progressive constitutional principles often remain confined to statutes and judgments due to poor enforcement and institutional inertia.

Here are the results of survey:

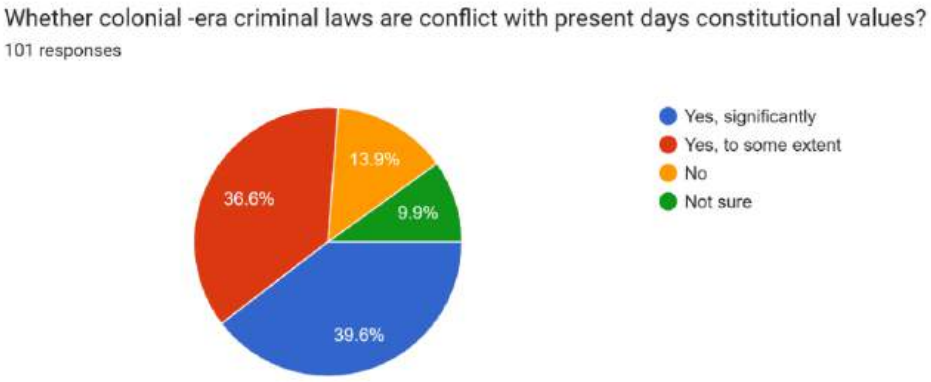


The survey conducted among 101 respondents aimed to assess awareness of the concept of constitutional morality. The results indicate that a significant majority of participants, 70.3%, reported that they are aware of the concept, demonstrating a reasonable level of understanding among the surveyed group. Meanwhile, 28.7% of respondents indicated that they had heard of constitutional morality but were not entirely clear about its meaning, suggesting some gaps in comprehension. Only a negligible proportion, 0.99%, reported no awareness at all.

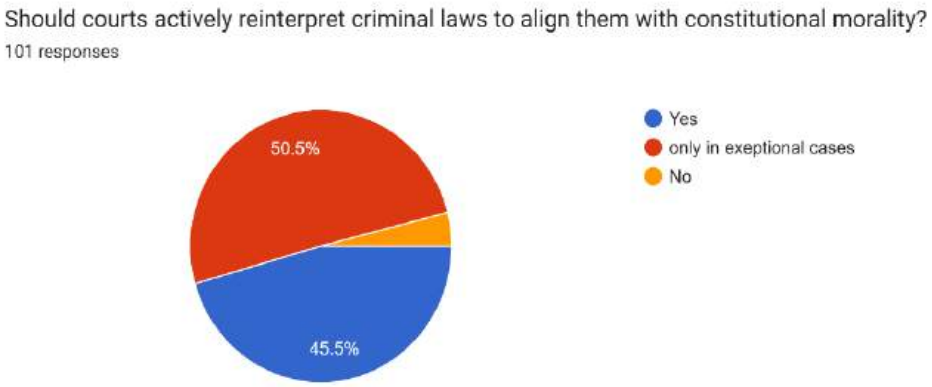
These findings suggest that while the concept is relatively well-known, there remains a need for more detailed dissemination and clarification, particularly for those who have only a superficial understanding. The data highlights the importance of educational initiatives to improve clarity and comprehension regarding constitutional principles in the general population.



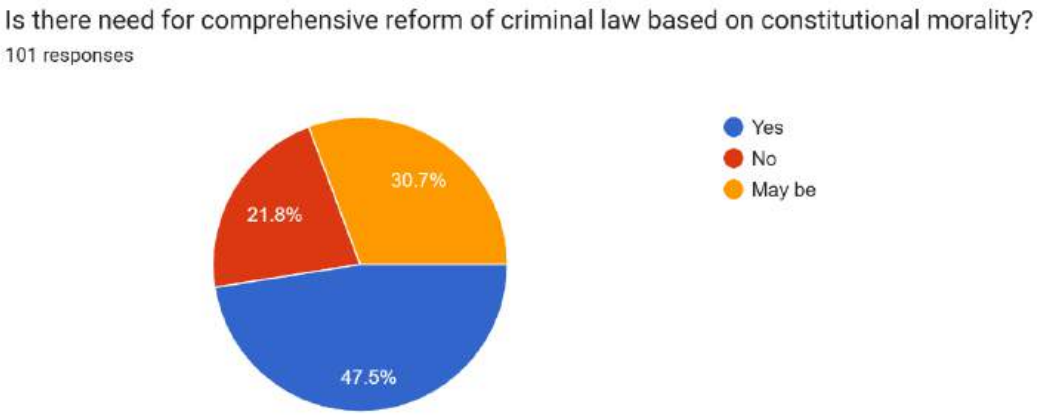
The survey conducted among 101 respondents sought to understand perceptions regarding the primary values promoted by constitutional morality. The results indicate a strong consensus that constitutional morality serves multiple purposes. While 17.8% of participants emphasized the role of individual liberty, and 27.7% highlighted justice and fairness, a larger portion, 32.7%, identified equality and dignity as the main focus. Notably, the largest group, 42.6%, believed that constitutional morality promotes all these values collectively. A small number of respondents also showed minor variations in interpretation, suggesting slight confusion or overlap in understanding. Overall, these findings reveal that the general perception leans towards viewing constitutional morality as a comprehensive principle aimed at safeguarding liberty, justice, fairness, and equality, rather than focusing on any single aspect.



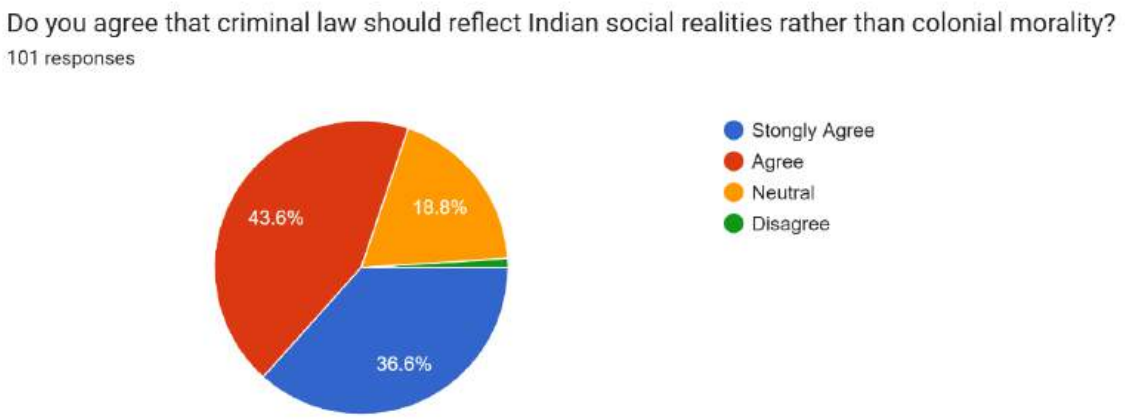
Based on the survey results, a majority of respondents believe that colonial-era criminal laws conflict with present-day constitutional values. Specifically, 39.6% feel they conflict significantly, while 36.6% think they conflict to some extent. Only 13.9% believe there is no conflict, and 9.9% are unsure. This indicates a general perception that these outdated laws may not fully align with modern constitutional principles, highlighting the need for legal reform to ensure consistency with contemporary democratic and human rights standards.



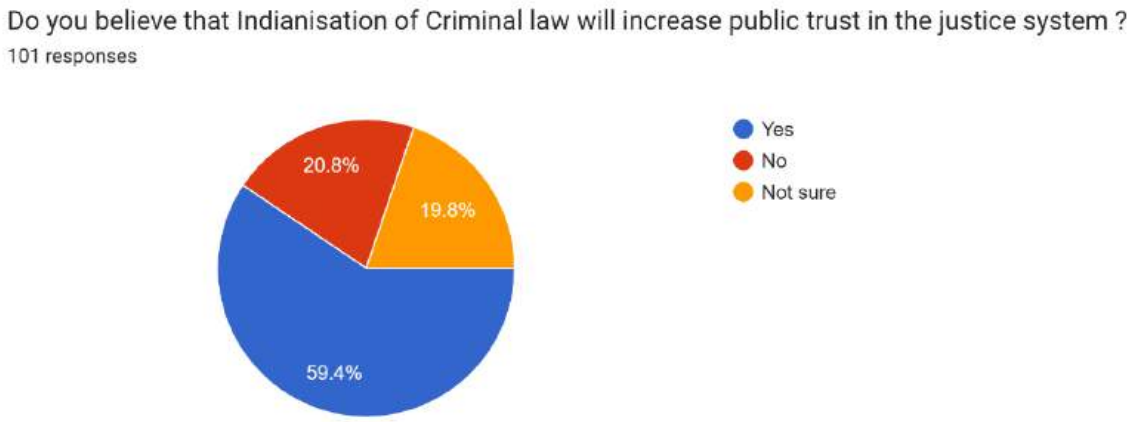
The survey results show that opinions are fairly split on whether courts should actively reinterpret criminal laws to align with constitutional morality. About 45.5% of respondents support active reinterpretation, while slightly more, 50.5%, think it should happen only in exceptional cases. A small minority, 4%, oppose such reinterpretation entirely. This indicates a general cautious approach, with most people preferring judicial intervention only when necessary rather than as a routine practice.



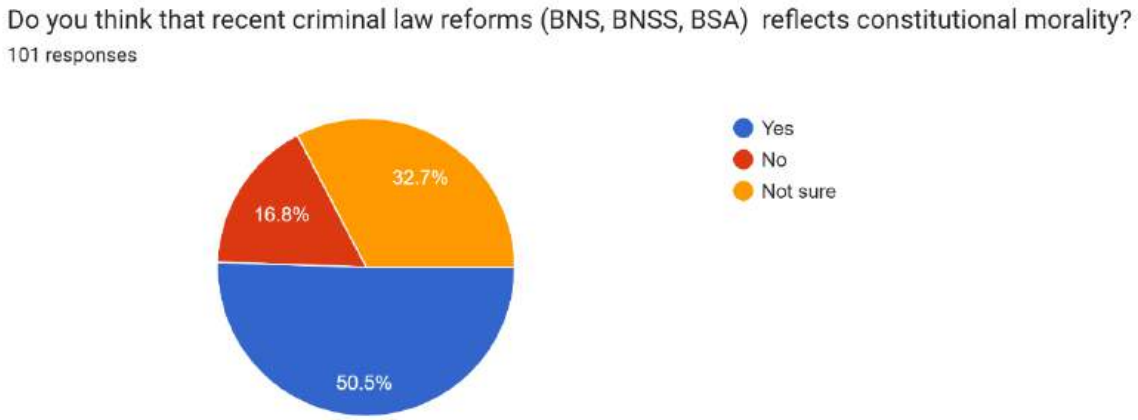
Based on the significant portion (47.5%) believe that there is a need for comprehensive reform of criminal law grounded in constitutional morality. Around 30.7% were uncertain, indicating potential openness to reform depending on further discussion or clarity, while 21.8% felt such reform is unnecessary. These findings suggest that while nearly half of the participants support constitutional morality as a guiding principle for legal reform, a considerable number remain undecided, reflecting a nuanced perspective among the public.



The survey results indicate a resounding public demand for the decolonization of the Indian legal framework, with **80.2%** of the 101 respondents agreeing that criminal law should reflect indigenous social realities rather than vestigial colonial morality. Specifically, **36.6%** strongly agreed and **43.6%** agreed with this shift, suggesting that the majority of participants view the existing British-era legal structures as disconnected from contemporary Indian values. With only a negligible fraction (roughly **1%**) expressing disagreement, the data underscores a significant mandate for legislative reform aimed at "Indianizing" the justice system to ensure it is sociologically relevant and culturally grounded.

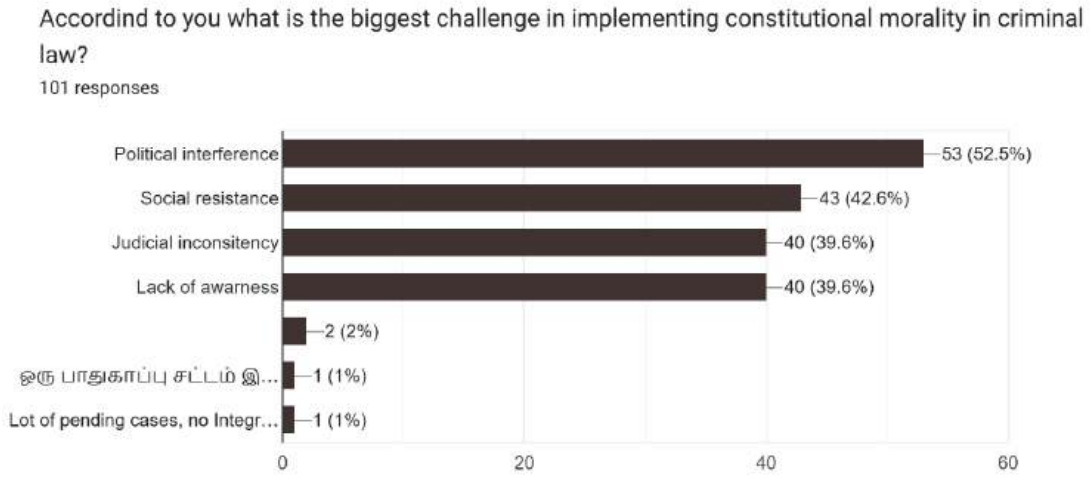


The survey indicates that a majority of respondents (**59.4%**) believe the Indianisation of criminal law will enhance public confidence in the justice system. While **20.8%** expressed no and **19.8%** remained uncertain, the data overall suggests that aligning legal frameworks with indigenous values is perceived as a vital step toward increasing judicial legitimacy and relatability.



The survey findings indicate that a majority of respondents view the shift toward "Indianisation" and recent legislative reforms (BNS, BNSS, BSA) as positive developments for the legal system. Specifically, **59.4%** of participants believe that Indianisation of criminal law will bolster public trust, while **50.5%** agree that these specific reforms align with constitutional morality. However, a significant level of uncertainty exists, with **32.7%** unsure about the reforms' constitutional alignment and roughly **40%** undecided regarding the overall impact on public trust. This suggests that while there is strong general support for decolonizing

the law, a substantial portion of the public remains in a "wait-and-see" mode regarding the practical implementation and ethical outcomes of these changes.



Despite this support, significant barriers to implementation persist, most notably **political interference (52.5%)** and **social resistance (42.6%)**. Furthermore, a substantial segment of the population remains uncertain, with **32.7%** unsure of the reforms' constitutional alignment and roughly **40%** citing a **lack of awareness** and **judicial inconsistency** as major hurdles which helps accused persons, also lot of pending cases, no Integration of technology, a lot of loopholes is one of the challenges. These results suggest that while the shift away from colonial-era law is welcomed, its success depends on overcoming systemic challenges and improving public understanding of the new legal framework.

NEED FOR INDIANISATION OF CONSTITUTIONAL MORALITY AND CRIMINAL LAW REFORMS

1. **Colonial Criminal Law Conflicts with Constitutional Morality**
   This paper clearly establishes that colonial-era criminal laws were designed for imperial control rather than constitutional governance. Provisions rooted in Victorian morality and administrative convenience often undermine constitutional values such as dignity, equality, and personal liberty. Indianisation is therefore necessary to eliminate this structural contradiction and ensure that criminal law derives legitimacy from constitutional morality rather than colonial legality.

2. **Constitutional Morality Requires Contextual Application, Not Abstract Adoption**
   While constitutional morality promotes universal values like liberty, equality, and dignity, the paper shows that these values must be interpreted within India's socio-cultural realities. Indianisation ensures that constitutional morality is not mechanically transplanted but meaningfully applied in a way that resonates with indigenous social conditions, pluralism, and lived experiences of justice.
3. This study examines the relationship between constitutional morality and the Indianisation of criminal law within the framework of recent criminal justice reforms. The research adopts an empirical approach based on survey responses collected from advocates, academicians, students, and members of the public. The Indian criminal justice system has historically functioned under statutes shaped during the colonial period, including the Indian Penal Code, Code of Criminal Procedure, and Indian Evidence Act. Although these laws were amended over time, concerns persisted regarding their compatibility with constitutional values.

   The paper evaluates the necessity for reform by analysing constitutional morality as a guiding principle for criminal law. Constitutional morality emphasises the primacy of dignity, liberty, equality, and justice over majoritarian social beliefs. The study argues that criminal law must reflect these values to avoid arbitrariness, discrimination, and outdated moral assumptions. Judicial decisions such as Navtej Singh Johar v. Union of India and Joseph Shine v. Union of India illustrate the movement towards rights-based criminal jurisprudence and demonstrate the role of courts in aligning criminal law with constitutional principles.

   The paper also discusses Indianisation of criminal law as a process of adapting legal provisions to India's socio-cultural realities while maintaining constitutional commitments. It evaluates existing provisions, discretionary powers, and punitive approaches that conflict with reformative justice. By integrating constitutional morality with contemporary social needs, the study proposes a balanced criminal justice framework that protects individual rights while addressing societal interests. The research concludes that meaningful reform is essential to transform criminal law into a system grounded in constitutional values, accountability, and human dignity.

4. **Protection of Fundamental Rights Against Arbitrary State Power** Criminal law directly mediates the coercive power of the State. The paper highlights that broad discretion in arrest, investigation, and prosecution—carried over from colonial frameworks—creates scope for arbitrariness and abuse. Indianisation guided by constitutional morality is essential to recalibrate this power relationship, ensuring proportionality, due process, and rights-based criminal justice under Articles 14 and 21.
5. **Transition from Punitive Control to Victim-Centric and Reformative Justice** The paper demonstrates that colonial criminal law prioritised punishment and state authority over justice and rehabilitation. Indianisation, aligned with constitutional morality, supports a shift towards victim-centric, restorative, and reformative justice models. This transformation is necessary to fulfil the Constitution's promise of substantive justice, human dignity, and fraternity, rather than retaining a system designed for discipline and deterrence alone.

SUGGESTIONS

1. Launch comprehensive legal literacy programs to bridge the significant awareness gap identified among the public.
2. Provide clear official explanations to clarify how the new laws align with constitutional morality for those currently uncertain.
3. Establish institutional safeguards to protect the new legal framework from perceived threats of political interference.
4. Formalize the legal definition of "Indian social realities" to meet the high public demand for a decolonized system.
5. Implement mandatory judicial training to ensure consistent interpretation and application of the BNS, BNSS, and BSA.
6. Develop grassroots outreach strategies to reduce social resistance toward these major legislative transitions.
7. Ensure all new statutes are accessible in regional languages to improve overall public trust and judicial relatability.
8. Analyse the specific concerns of unsure respondents to identify systemic flaws that exist independently of colonial history.

9. Release regular impact assessments to provide transparency for citizens who remain undecided about the reforms.
10. Prioritize digital trial management within the new framework to address long-standing issues like case pendency and integrity.

CONCLUSION

This paper concludes that the Indian criminal justice system stands at a critical juncture where meaningful reform is no longer optional but constitutionally imperative. The continued reliance on colonial-era legal frameworks has created a persistent dissonance between inherited criminal laws and the transformative values enshrined in the Indian Constitution. Through the lens of constitutional morality, the study demonstrates that criminal law must operate as a rights-oriented and dignity-centred framework, rather than as an instrument of state control rooted in outdated moral and administrative assumptions.

The process of Indianisation, as examined in this paper, emerges not as a rejection of universal legal principles but as their contextual adaptation to India's socio-cultural diversity and constitutional ethos. Empirical findings further reinforce the societal demand for decolonised and constitutionally aligned criminal laws that reflect contemporary realities and democratic aspirations. While recent reforms through the BSA, BNS, BNSS signify a decisive step towards this transformation, their true success will depend on consistent constitutional interpretation, effective implementation, and sustained institutional commitment to fundamental rights.

Ultimately, integrating constitutional morality with Indian social realities is essential to transform criminal law from a legacy of colonial governance into a constitutional mechanism for justice, accountability, and human dignity. Such a transformation is vital for strengthening public trust, safeguarding individual liberties, and ensuring that the criminal justice system faithfully serves the ideals of liberty, equality, fraternity, and the rule of law in a constitutional democracy.

NEW CRIMINAL LAW, OLD MORALITY: AN ANALYSIS OF SECTION 84 OF THE BHARATIYA NYAYA SANHITA

Ms. Sandra Sunil[8], Dr. Jithin Mathew[9]

Introduction

The transformation of criminal law in India through the enactment of the Bharatiya Nyaya Sanhita, 2023 (BNS) has been projected as a landmark break from the colonial and patriarchal legacy of the Indian Penal Code, 1860. Marketed as a modern, decolonised, and constitutionally aligned criminal code, the BNS aims to reflect contemporary values of equality, dignity, and individual autonomy. However, a closer examination of certain provisions reveals that substantive reform has often been replaced by nominal restructuring, where old ideas persist under new legislative language. One such provision is Section 84 of the BNS, which criminalises the act of taking or enticing away a married woman with the intent that she may have illicit intercourse.[10]

This provision assumes particular significance in light of the Supreme Court's landmark decision in *Joseph Shine v Union of India* (2018)[11], which decriminalised adultery by striking down Section 497 of the Indian Penal Code. In *Joseph Shine*, the Court unequivocally rejected the notion of a married woman as the property of her husband and held that criminal law cannot be used to enforce sexual fidelity or patriarchal morality. Emphasising constitutional morality over social morality, the Court highlighted women's sexual autonomy, decisional freedom, and equality under Articles 14, 15, and 21 of the Constitution. The judgment marked a decisive constitutional shift away from State control over consensual intimate relationships between adults.

Despite this progressive constitutional backdrop, Section 84 of the BNS re-establishes many of the assumptions that animated the repealed adultery provision. Although adultery no longer exists as a direct offence, the criminalisation of "enticing" a married woman for "illicit intercourse" continues to locate the harm not in coercion or exploitation, but in the perceived

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[9] Faculty at KMC College of Law, Tiruppur
[10] Bharatiya Nyaya Sanhita 2023, s. 84.
[11] *Joseph Shine v Union of India* (2019) 3 SCC 39.

violation of the marital bond.[12] The language of the provision implicitly treats the married woman as a passive subject who can be enticed, taken or detained, rather than as an autonomous individual capable of consenting to sexual activities.[13] Moreover, the requirement that the accused must know or believe the woman to be another man's wife reintroduces a proprietary understanding of marriage, where the husband's exclusive sexual claim is indirectly protected through penal sanction.

Historically, this offence traces its lineage to Section 498 of the IPC, which existed alongside Section 497 and functioned as its supplementary provision.[14] While Section 497 penalised the adulterous man, Section 498 addressed the "enticement" of the wife, reinforcing the idea that women required protection rather than recognition as rights-bearing individuals. The retention of this logic in the BNS suggests a deeper continuity with colonial and patriarchal conceptions of family, sexuality, and social order, despite the constitutional repudiation of these ideas in post-independence jurisprudence.

This paper situates Section 84 of the BNS within the broader discourse on constitutional criminal law and legal reform. It argues that the provision exemplifies "continuity disguised as change", where formal repeal of an unconstitutional offence is undermined by the survival of its underlying moral and structural assumptions.[15] By examining Section 84 through the lens of *Joseph Shine*, gender equality, and sexual autonomy, the paper seeks to question whether India's new criminal codes truly represent a transformative break from the past, or merely a rebranding of entrenched patriarchal norms under the guise of reform.

[12] Legal Bites, 'Does Section 84 of the Bharatiya Nyaya Sanhita Strike the Right Balance Between Protection and Fairness?' (2025). https://www.legalbites.in/bharatiya-nyaya-sanhita/does-section-84-of-the-bharatiya-nyaya-sanhita-bns-strike-the-right-balance-between-protection-and-fairness-1135998
[13] LawGratis, 'Section 84 of the Bharatiya Nyaya Sanhita (BNS), 2023' (2025). https://www.lawgratis.com/blog-detail/section-84-of-the-bharatiya-nyaya-sanhita-bns-2023-1
[14] Indian Penal Code 1860, s 498 (repealed).
[15] Anhad Law, 'A Guide to India's New Criminal Law: Understanding the Bharatiya Nyaya Sanhita' (2023). https://www.anhadlaw.com/post/a-guide-to-india-s-new-criminal-law-understanding-bharatiya-nyaya-sanhita-bns

Statutory and Constitutional Framework

Section 84, Bharatiya Nyaya Sanhita, 2023

Section 84 of the Bharatiya Nyaya Sanhita, 2023 criminalises the act of taking or enticing away a married woman with criminal intent. The provision reads as follows:

"Whoever takes or entices away any woman who is and whom he knows or has reason to believe to be the wife of any other man, with intent that she may have illicit intercourse with any person, or conceals or detains with that intent any such woman, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."[16]

Although enacted as part of a reformed criminal code, Section 84 substantially reproduces the language, structure, and moral assumptions of the repealed Section 498 of the Indian Penal Code, thereby continuing the criminal regulation of consensual adult relationships through the institution of marriage.

Section 498, Indian Penal Code, 1860 (Repealed)

Section 498 of the Indian Penal Code, 1860 criminalised the act of taking, enticing away, concealing, or detaining a married woman with the intent that she may have illicit intercourse. The provision treated the married woman as a passive subject whose sexuality and mobility were subject to control through criminal law. Functioning as a companion offence to adultery, Section 498 reinforced a protectionist and proprietary conception of marriage, where the husband's exclusive interest was indirectly safeguarded by penal sanction.[17]

Section 497, Indian Penal Code, 1860 (Repealed)

Section 497 IPC criminalised adultery by punishing a man who engaged in sexual intercourse with the wife of another man without the husband's consent, while exempting the woman from

[16] Supra 1
[17] Supra 5

criminal liability. In *Joseph Shine v Union of India*[18], the Supreme Court declared Section 497 unconstitutional on the ground that it was arbitrary, discriminatory, and violative of Articles 14, 15, and 21 of the Constitution. The Court recognised sexual autonomy as an essential component of personal liberty and rejected the patriarchal assumption that marriage entails the subordination of women. Section 497 IPC, along with Section 198(2) of the Code of Criminal Procedure, 1973 insofar as it related to adultery, was consequently struck down.[19]

Section 198(2), Code of Criminal Procedure, 1973 (Repealed)

Section 198(2) of the Code of Criminal Procedure, 1973 restricted the right to initiate prosecution for offences under Sections 497 and 498 of the Indian Penal Code by recognising **only the husband of the woman as the "aggrieved person"** competent to file a complaint. In the absence of the husband, a person who had the care of the woman on his behalf could, with the leave of the Court, institute proceedings. This provision reflected a procedural framework that centred the husband's interest in marital offences and excluded the woman's agency in initiating criminal action.[20]

Article 14, Constitution of India: Equality before Law

Article 14 guarantees equality before the law and equal protection of the laws. It prohibits arbitrary state action and requires that criminal law adhere to substantive equality rather than reinforce gender stereotypes or discriminatory classifications.[21]

Article 15, Constitution of India: Prohibition of Discrimination

Article 15 prohibits discrimination on the grounds of sex, among others. Provisions that are facially neutral but result in gendered impact or reinforce traditional stereotypes fall within the scope of prohibited discrimination under this article.[22]

[18] Supra 2
[19] Indian Penal Code 1860, s 497 (repealed).
[20] Code of Criminal Procedure 1973, s 198(2).
[21] Constitution of India, art 14.
[22] Constitution of India, art 15.

Article 21, Constitution of India: Protection of Life and Personal Liberty

Article 21 protects life and personal liberty, encompassing dignity, privacy, and sexual autonomy. The Supreme Court has consistently held that consensual sexual relationships between adults fall within the protected sphere of personal liberty and cannot be subjected to moral policing through criminal law.[23]

Judicial Interpretations of Section 498 IPC

Judicial interpretation of Section 498 of the Indian Penal Code consistently reinforced its proprietary and patriarchal foundations. In *Alamgir v. State of Bihar*[24], the Supreme Court clarified that the offence was complete once the husband was deprived of control over his wife, holding that the consent or willingness of the woman was legally irrelevant. This approach was echoed in *Gobinda Chandra Singha Roy v. Haru Chandra Singha Roy*[25], where the Court emphasised that "taking" required active assistance in removing the woman from her husband's protection, underscoring the custodial logic of the provision.

Courts further interpreted "enticement" as persuasion or inducement directed at withdrawing the wife from the husband's control, as seen in *Mahiji Fula*[26] and *Norman O'Conner v. Emperor*[27]. The requirement that the woman be under the husband's protection was reaffirmed in *Kanbi Karasan Naran v. Kanbi Daiya Naran*[28], demonstrating that the offence was not concerned with harm to the woman but with infringement of the husband's authority.

Several decisions, including *Emperor v. Nazir Khan*[29], *Emperor v. Madan Gopal*[30], and *Prahlad Barman v. Emperor*[31], stressed strict proof of a valid marriage as an essential ingredient, reinforcing the centrality of marital status over individual autonomy. Procedural control over prosecution was similarly centred on the husband, as reflected in *Emperor v. Ramnarayan Baburao Kapor*[32] and later affirmed in *BS Puttaswamy Sannaiah v. MS Shamla*

[23] Constitution of India, art 21
[24] *Alamgir v State of Bihar* (1959) SCR Supl. (1) 464.
[25] *Gobinda Chandra Singha Roy v. Haru Chandra Singha Roy* (1967) 12 CAL CK 0001
[26] *Emperor v. Mahiji Fula* (1933)35BOMLR1046
[27] *Norman O'Conner v Emperor* AIR (1935) Cal 345
[28] *Kanbi Karasan Naran v. Kanbi Daiya Naran*, AIR 1951 Kutch 17
[29] *Emperor v Nazir Khan* (1914) ILR 36 All 1
[30] *Emperor v Madan Gopal* (1912) ILR 34 All 589
[31] *Prahlad Barman v. Emperor* (1930) 126 IC 1761

[32] *Emperor v Ramnarayan Baburao Kapor* (1937) 39 BOMLR 61

Kumari Puttaswamy[33], which interpreted Section 198(2) CrPC to restrict locus standi primarily to the husband.

Finally, cases such as *Prem Nath Laroiya v. The State*[34] and *Singana Naga Nooka Chakrarao v. State of Uttar Pradesh*[35] reiterated that intent to facilitate illicit intercourse, rather than the woman's consent or agency, was the decisive factor. Collectively, this body of jurisprudence confirms that Section 498 IPC was judicially understood as a mechanism to protect the husband's proprietary interest in marriage, not the autonomy or dignity of the wife, an understanding that Section 84 of the BNS substantially reproduces.[36]

Joseph Shine v. Union of India: Constitutional Reframing of Adultery

Section 497 IPC and Its Historical Rationale

Section 497 of the Indian Penal Code (IPC) criminalised adultery by penalising only the male participant who engaged in sexual intercourse with a married woman **without the consent or knowledge of her husband**, while the woman is completely exempted from any liability. This structure reflected **Victorian morality** and colonial legal paternalism, built on the assumption that a wife was her husband's property and lacked any sexual agency.[37]

Lord Macaulay, who initially drafted the IPC, had **omitted adultery** from the original code, stating that it was a **private wrong** rather than a criminal offence. The Second Law Commission of 1847 later inserted Section 497, citing the "secondary and dependent position of women" in Indian society as justification.[38]

The rationale behind this insertion rested on three patriarchal assumptions:

- **Wives as property**: only husbands were "aggrieved persons" under Section 198(2) CrPC;

[33] *BS Puttaswamy Sannaiah v MS Shamla Kumari Puttaswamy* ILR (2007) Kar 5319
[34] *Prem Nath Laroiya v The State* (1973) CriLJ 1281
[35] *Singana Naga Nooka Chakrarao v State of UP* (2007) CriLJ 3466
[36] Saumya Garg, 'Detailed Study on Section 498 of IPC' (2023) 3(2) *Jus Corpus Law Journal* 983–990.
[37] Shivanshi Shukla, 'A Critical Analysis on Decriminalizing Adultery' (2021) 4(2) *International Journal of Law Management & Humanities* 2507–2530. https://www.ijlmh.com/
[38] Kahksha Sindhwani, 'Adultery: A Relic of the Past in Light of *Joseph Shine v Union of India*' (2020) 4(1) *Indian Journal of Law and Legal Research*. https://journals.mmupress.com/ajlp

- **Absence of female agency**: women were presumed incapable of independent sexual consent; and
- **Moral regulation**: adultery was seen as a threat to the patriarchal family unit rather than a private act between consenting adults.[39]

Gendered Construction of Adultery

This asymmetrical legal structure embedded deep gender bias. The law punished only men who "invaded another man's marital property," reinforcing the notion of wives as **passive dependents** rather than autonomous individuals capable of giving consent. Section 198(2) CrPC compounded this by granting only the husband (or his agent) the right to prosecute, excluding wives entirely. This "gendered asymmetry reduced women to the status of property and denied them any legal personhood in sexual matters."[40]

Key Constitutional Findings

The Supreme Court, in *Joseph Shine v Union of India*[41], unanimously struck down Section 497 IPC and Section 198(2) CrPC as **unconstitutional,** finding them violative of **Articles 14, 15, and 21** of the Constitution.

Article 14: Manifest Arbitrariness and Gender Stereotyping

Chief Justice **Dipak Misra** and Justice **R.F. Nariman** held that Section 497 was **manifestly arbitrary**, as it punished only men, granted husbands "veto power" over their wives' sexual choices, and ignored women's autonomy. The judgment declared:

"Section 497 treats a married woman as the property of the husband… it suffers from the vice of Article 14 of the Constitution being manifestly arbitrary."[42]

[39] Rathivaani Sathiaseelan and Anusha Aurasu, 'Case Commentary: *Joseph Shine v Union of India: Farewell to a Victorian-Era Adultery Law*' (2023) 3(1) *Asian Journal of Law and Policy* 39–47. https://www.ijllr.com/volume-iv-issue-i

[40] Owais Hasan Khan and Farheen Arif, 'Law and Sexuality: Commentary on *Joseph Shine v Union of India and Others* (2018) SC' (2018) 14(1) *National Law School Journal*. https://repository.nls.ac.in/nlsj/vol14/iss1/16

[41] Supra 2.

[42] Ibid.

Justice Nariman further observed that the purported objective of preserving marital sanctity was **illusory**, since a husband's consent or connivance could legalise the act, revealing the true proprietary foundation of the law.[43]

Article 15: Discrimination and Patriarchal Assumptions

Justice **D.Y. Chandrachud** provided a powerful gender-equality reading of Article 15. He rejected the State's reliance on **Article 15(3)** (protective discrimination), clarifying that such provisions **cannot justify patriarchal protectionism**. His observation that *"Article 15(3) does not protect a statutory provision that entrenches patriarchal notions in the garb of protection"* marked a significant jurisprudential shift.

This interpretation aligned with prior feminist readings of Article 15 by scholars arguing that "protective discrimination cannot operate as paternalistic control".

Article 21: Sexual Autonomy, Privacy, and Dignity

The Court expanded the scope of Article 21 to include **sexual autonomy and decisional privacy**. Justice Chandrachud held:

"Autonomy in matters of sexuality is intrinsic to a dignified human existence… Section 497 disregards the sexual autonomy which every woman possesses as a necessary condition of her existence."[44]

This reasoning directly linked the case to the **privacy jurisprudence** developed in *K.S. Puttaswamy v Union of India* (2017)10 SCC 1[45]. Justice **Indu Malhotra**, concurring, stressed that Section 497 was not gender-neutral and denied wives an equal right to prosecute adulterous husbands, violating both Articles 14 and 21.[46]

From Marital Morality to Individual Autonomy

The Court reoriented criminal law away from enforcing **marital morality** and towards protecting **individual autonomy**. As C.J. Dipak Misra stated, *"A husband is not the master;*

[43] Id.
[44] *Joseph Shine* [2018] SCC OnLine SC 1676, per Chandrachud J.
[45] *K.S. Puttaswamy v Union of India* (2017) 10 SCC 1.
[46] Supra 28.

equality is the governing parameter." This pronouncement marked a definitive rejection of the colonial model of marriage as a patriarchal hierarchy.[47]

By declaring that adultery is no longer a crime but a **civil matter**, the Court recognised marriage as a contract built on **trust and equality**, not ownership and obedience.[48]

From Proprietary Marriage to Equal Partnership

Justice Chandrachud reframed marriage as a partnership between equals, holding that *"Equality of rights and entitlements between parties to a marriage is crucial to preserve the values of the Constitution."* Section 497's logic of exclusive male grievance, therefore, violated the **constitutional vision of partnership** and **mutual autonomy**.[49]

Limits on Criminal Law's Role in Regulating Intimacy

The judgment also drew a bright line between **private morality** and **public harm**, declaring that consensual sexual acts between adults cannot be subject to criminal sanction. Dipak Misra C.J.I. observed that criminal law should evolve with **"societal change and transformative constitutionalism,"** warning against the use of penal codes to enforce outdated moral standards.[50,51,52.]

Section 84 in conflict with Joseph Shine Jurisprudence

The enactment of **Section 84 of the Bharatiya Nyaya Sanhita, 2023** marks a continuity of colonial and patriarchal criminal law logic within a framework that claims to be "decolonised." Despite the decriminalisation of adultery in *Joseph Shine v Union of India* (2018), which recognised women's sexual autonomy and decisional privacy as fundamental rights, Section

[47] Supra 29.
[48] *Joseph Shine v Union of India* (2018) 3 SCC 39; AIR 2018 SC 4898; Writ Petition (Criminal) No 194 of 2017 (SC) https://privacylibrary.ccgnlud.org/case/joseph-shine-vs-union-of-india
[49] Supra 30.
[50] *Joseph Shine v Union of India: Decriminalisation of Adultery – Background*' *Supreme Court Observer* (2018) https://www.scobserver.in/cases/joseph-shine-v-union-of-india-decriminalisation-of-adultery-background/
[51] *Case Analysis: Joseph Shine v Union of India*' *iPleaders Blog* (2018) https://blog.ipleaders.in/case-analysis-joseph-shine-v-union-india/
[52] *Case Comment: Joseph Shine v Union of India*' *Lawctopus Academike* (2018) https://www.lawctopus.com/academike/case-comment-joseph-shine-vs-union-of-india/

84 reintroduces, under a new title, the very assumptions of dependency, moral control, and proprietorship that the Supreme Court unanimously struck off.[53]

While adultery as an independent offence was struck down for violating **Articles 14, 15, and 21** of the Constitution, Section 84 continues to treat a married woman as a passive object who can be "taken," "enticed," or "detained," implying a lack of agency over her own sexuality and mobility.[54] This section thereby risks re-criminalising the private domain of consensual relationships, contrary to the **Joseph Shine** jurisprudence that sought to liberate the institution of marriage from patriarchal legal constructions. The language of "illicit intercourse" further moralises adult sexual relationships, contradicting the Supreme Court's consistent emphasis that the State cannot impose **private morality** as a matter of criminal law.[55]

Section 84 must be examined against the **constitutional benchmarks** laid down in *Joseph Shine*, especially regarding **equality, non-discrimination**, and **personal liberty**. This analysis seeks to demonstrate that Section 84, despite its modern nomenclature, preserves the colonial legacy of Section 497 IPC and fails to align with India's post-2018 constitutional vision of gender justice and autonomy.

Continuity of Patriarchal Ideology

Both **Section 497 of the Indian Penal Code, 1860 (IPC)** and **Section 84 of the Bharatiya Nyaya Sanhita, 2023 (BNS)** share a common structural and conceptual premise, that a woman's identity is relational and derivative, tied to her husband's authority. The very phrasing of Section 84, describing the subject as "*any woman who is and whom he knows or has reason to believe to be the wife of any other man*," reflects a legal and moral worldview where a woman's sexuality is subsumed under the patriarchal construct of marriage.[56] This continuity exposes the persistence of the **"doctrine of coverture"**, under which the legal personhood of a wife is combined into that of her husband, effectively denying her any independent sexual

[53] Supra 29, 18.
[54] Dipak Misra CJ in *Joseph Shine v Union of India* (2018) 3 SCC 39, para 40
[55] 'A Guide to India's New Criminal Law: Understanding Bharatiya Nyaya Sanhita (BNS)' (2024) https://www.anhadlaw.com/post/a-guide-to-india-s-new-criminal-law-understanding-bharatiya-nyaya-sanhita-bns..
[56] *Bharatiya Nyaya Sanhita 2023*, s 84; cf *Indian Penal Code 1860*, s 497; *Jus Corpus*, 'Section 498 IPC under Constitutional Scrutiny' (2024) https://www.juscorpus.com/section-498-ipc-under-constitutional-scrutiny/

and decisional autonomy.[57] The case of *Alamgir v State of Bihar*[58], demonstrate how a wife's **consent or willingness** is legally irrelevant, the offence was complete once the husband's proprietary right was infringed.[59]

This protectionist and possessive framework stands in direct conflict with the constitutional reasoning in ***Joseph Shine v Union of India (2018)***[60], where the Supreme Court rejected the notion of women as dependents or property of their husbands. Section 84, despite its new codified form, provides this same **patriarchal ideology under a modern guise**. It criminalises third-party conduct on the assumption that a woman's sexuality must remain under the surveillance of marriage and the State, effectively reinstating the proprietary and moralistic rationale that the Supreme Court repudiated in *Joseph Shine*.[61]

Concept of Consent and Autonomy

Section 84 of the *Bharatiya Nyaya Sanhita, 2023* (BNS) presupposes that a married woman can be *"taken," "enticed away," or "detained"* by another person, thereby **negating her agency and free will**. This formulation echoes the paternalistic logic of the repealed Section 498 IPC, which treated the wife as an object under the guardianship of her husband, rather than as an autonomous constitutional subject.[62] The language assumes that a woman is incapable of making independent choices about her relationships, sexuality, or mobility, which directly **contradicted the** *Joseph Shine decison*.[63] As cases such as *Alamgir*[64], *Mahiji Fula*[65], and *Prem Nath Laroiya*[66] demonstrate, the woman's consent was doctrinally irrelevant, an assumption expressly rejected in *Joseph Shine*."

[57] KD Gaur, *Textbook on the Bharatiya Nyaya Sanhita, 2023* (9th edn, revised by Madhu Gaur, assisted by R Soundararajan, LexisNexis Universal 2024).
[58] Supra 27.
[59] *Gobinda Chandra Singha Roy v Haru Chandra Singha Roy* (1968) Cr LJ 1352.
[60] Supra 2.
[61] *Legal Bites*, 'Does Section 84 of the Bharatiya Nyaya Sanhita Strike the Right Balance between Protection and Fairness?' (2024) https://www.legalbites.in/bharatiya-nyaya-sanhita/does-section-84-of-the-bharatiya-nyaya-sanhita-bns-strike-the-right-balance-between-protection-and-fairness-1135998
[62] KD Gaur, *Textbook on the Bharatiya Nyaya Sanhita, 2023* (9th edn, revised by Madhu Gaur, assisted by R Soundararajan, LexisNexis Universal 2024)..
[63] Supra 2
[64] Supra 27.
[65] Supra 17.
[66] Supra 22.

In *Joseph Shine*, the Court grounded its reasoning in **Articles 14, 15, and 21**, affirming that women possess **equal decisional and sexual autonomy** as men. Justice **D.Y. Chandrachud** explicitly stated that "*autonomy in matters of sexuality is intrinsic to a dignified human existence,*" recognising that individual choice in intimate matters lies at the core of constitutional liberty.[67] Similarly, Justice **Indu Malhotra** noted that the criminalisation of adultery denied women their agency, as "*the law treats the woman as a victim rather than as a participant, thereby infantilising her*."[68]

By continuing to define the offence around the husband's "loss of control" rather than the woman's **right to self-determination**, Section 84 effectively reinstates the subordination struck down in *Joseph Shine*. The conceptual premise that a woman can be "enticed", even with her consent suggests that her decisions are legally suspect or can be manipulated, reinforcing a gendered hierarchy inconsistent with modern constitutional morality.[69] As feminist scholars observe, such provisions reintroduce "*benevolent patriarchy*"[70] under the guise of protection, reviving the very structures of dependence that constitutional jurisprudence seeks to dismantle.[71]

Criminalization of Morality

The *Joseph Shine* judgment marked a **constitutional separation between law and morality**, holding that private acts of consensual intimacy between adults cannot be the subject of penal sanction. Chief Justice **Dipak Misra**, striking down Section 497 IPC, observed that "*adultery, though morally wrong, does not fit the criminal law's legitimate purpose*," while Justice **Nariman** emphasised that the State has "*no business to intrude into the sexual privacy of individuals.*"[72]

Section 84 of the BNS, however, **revives this moral paternalism** by criminalising conduct involving "illicit intercourse," a term that remains **undefined and inherently moralistic**. The

[67] ibid (Chandrachud J).
[68] ibid (Malhotra J).
[69] *The Daak*, 'Femme Covert: Beyond Joseph Shine and the Enduring Legacy of Coverture' (17 July 2025) https://thedaak.in/2025/07/17/femme-covert-beyond-joseph-shine-and-the-enduring-legacy-of-coverture/.
[70] Sarthak Rathod and Priyanka Sharma, 'A Criminological Study of Consent, Elopement and Rape: Are Some Rape Offenders Really Rapists?' (2021) 7(3) *International Journal of Multidisciplinary Research Review* 30.
[71] Supra 30.
[72] *Lawctopus Academike*, 'Case Comment: *Joseph Shine v Union of India*' (2018) https://www.lawctopus.com/academike/case-comment-joseph-shine-vs-union-of-india/.

use of this terminology invites judicial discretion based on prevailing social morality rather than objective harm, the very arbitrariness that the Supreme Court denounced in *Joseph Shine* and *Navtej Singh Johar v Union of India* (2018).[73] The term "illicit" has no constitutional or statutory basis in contemporary jurisprudence and reintroduces a Victorian moral vocabulary that conflates immorality with criminality.[74]

Further, by linking criminal liability to the **sexual behaviour of consenting adults**, Section 84 blurs the boundary between public harm and private morality. It legitimises **state surveillance over women's sexuality**, undermining the post-*Puttaswamy* right to privacy and decisional autonomy.[75] Retention of such moralistic language indicates a failure to internalise the constitutional transformation envisioned in *Joseph Shine*, a transformation focused on individual freedom, not institutional morality.[76]

Violation of Fundamental Rights

Article 14 – Equality before Law

Section 84 of the *Bharatiya Nyaya Sanhita, 2023* (BNS) violates **Article 14** of the Constitution by creating an **arbitrary classification** between married and unmarried women, and between men and women within marriage. The section criminalises the act of "taking or enticing away" a *married woman*, implying that her consent is legally insignificant if the act affects her husband's proprietary interests.[77] This classification, based on marital status and gender, lacks a rational nexus with any legitimate state objective. It presumes that a married woman is under her husband's control and incapable of making an independent choice.[78]

In *Joseph Shine*, Chief Justice **Dipak Misra** and Justice **R.F. Nariman** held that laws that "*treat women as the property of their husbands*" are **manifestly arbitrary** and unconstitutional.[79] Justice **Chandrachud** further clarified that the Constitution recognises

[73] *Navtej Singh Johar v Union of India* (2018) 10 SCC 1.
[74] *Jus Corpus*, 'Section 498 IPC under Constitutional Scrutiny' (2024) https://www.juscorpus.com/section-498-ipc-under-constitutional-scrutiny/.
[75] *K.S. Puttaswamy v Union of India* (2017) 10 SCC 1.
[76] *Anhad Law*, 'A Guide to India's New Criminal Law: Understanding the Bharatiya Nyaya Sanhita (BNS)' (2024) https://www.anhadlaw.com/post/a-guide-to-india-s-new-criminal-law-understanding-bharatiya-nyaya-sanhita-bns..
[77] Alamgir v State of Bihar, AIR 1959 SC 436: 1959 Supp (1) SCR 464: 1959 SCJ 457: 1979 Cr LJ 527.
[78] Supra 2.
[79] ibid (Misra C.J. and Nariman J.).

equality in substance, not merely in form: "Patriarchal social values and legal structures that deprive women of agency cannot claim the protection of Article 14." By perpetuating this proprietary framework, Section 84 reintroduces a discriminatory classification that the Court tried to eliminate, thus violating the equality guaranteed under Article 14.[80]

Article 15 – Non-Discrimination

Section 84 also infringes **Article 15(1)**, which prohibits discrimination on the grounds of sex. The provision is premised on the **gendered assumption** that men are aggressors and women are subjects of protection, a formulation that, under the guise of benevolence, supports gender hierarchy.[81] Further, by criminalising conduct only where the woman is "the wife of another man," the law privileges **male authority within marriage**, creating a dual standard of sexual freedom between men and women.[82]

Justice **Chandrachud**, in *Joseph Shine*, specifically warned that protective discrimination cannot justify "*a law that entrenches patriarchal notions in the garb of protection*." The section, therefore, contravenes Article 15 by reinforcing patriarchal stereotypes rather than dismantling them. Such gendered protectionism masks structural subordination, perpetuating a system that denies women equal personhood in sexual and relational domains.[83]

Article 21 – Right to Privacy and Dignity

The *Joseph Shine* judgment, building upon *K.S. Puttaswamy v Union of India (2017)*, affirmed that **privacy includes decisional autonomy, bodily integrity, and the freedom to make intimate choices**.[84] Justice **Chandrachud** observed that "*autonomy in matters of sexuality is intrinsic to a dignified human existence*," and that criminalising consensual adult intimacy violates the **constitutional right to privacy and dignity**.[85]

[80] ibid (Chandrachud J.).
[81] Supra 30.
[82] KD Gaur, *Textbook on the Bharatiya Nyaya Sanhita, 2023* (9th edn, revised by Madhu Gaur, assisted by R Soundararajan, LexisNexis Universal 2024).
[83] *The Daak*, 'Femme Covert: Beyond Joseph Shine and the Enduring Legacy of Coverture' (17 July 2025) https://thedaak.in/2025/07/17/femme-covert-beyond-joseph-shine-and-the-enduring-legacy-of-coverture/
[84] *K.S. Puttaswamy v Union of India* (2017) 10 SCC 1.
[85] *Joseph Shine* (Chandrachud J.).

Section 84 infringes this right by **policing consensual relationships** between adults under the guise of protecting marital sanctity. The undefined phrase "illicit intercourse" operates as a tool of moral censorship, allowing the State to intrude into the private sphere of sexuality and intimacy.[86] By retaining a colonial-era understanding of sexual morality, the section ignores the shift towards **constitutional morality** endorsed in *Navtej Singh Johar v Union of India* (2018) and *Joseph Shine*, where the Court held that "*constitutional morality must prevail over social morality.*"[87]

Thus, Section 84 not only conflicts with the principles of privacy and dignity but also undermines the transformative constitutional vision that places autonomy and equality at the heart of personal liberty.[88]

Comparative Constitutional and International Law Context

At the **international level**, the criminalisation of consensual sexual relations between adults, including adultery has been widely condemned as a **violation of women's human rights**. The **United Nations Working Group on Discrimination against Women and Girls** has declared that laws penalising adultery "*constitute a violation of women's human rights and dignity*" and are incompatible with states' obligations under international human rights law.[89] Such laws, perpetuate **gender stereotypes** and **unequal power structures** by treating women's sexuality as a matter of state or male control rather than individual autonomy.[90] Section 84, continues to embody these same discriminatory assumptions namely, that a woman's sexuality belongs to her husband and requires state protection.

India's commitments under the **Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW),** ratified in 1993, further reinforce the constitutional incompatibility of Section 84. **Article 2(f)** of CEDAW obliges State parties to modify or abolish laws, customs, and practices that constitute discrimination against women,

[86] *Anhad Law*, 'A Guide to India's New Criminal Law: Understanding Bharatiya Nyaya Sanhita (BNS)' (2024) https://www.anhadlaw.com/post/a-guide-to-india-s-new-criminal-law-understanding-bharatiya-nyaya-sanhita-bns.
[87] *Navtej Singh Johar v Union of India* (2018) 10 SCC 1, [119] (Chandrachud J.).
[88] Supra 29.
[89] United Nations Human Rights Council, 'Criminalization of Adultery a Violation of Women's Human Rights' (OHCHR, 2023) https://www.ohchr.org/en/special-procedures/wg-women-and-girls/criminalization-adultery-violation-womens-human-rights
[90] ibid.

while **Article 5(a)** mandates the elimination of gender stereotypes based on traditional roles.[91] In **General Recommendation No. 35**, which updates General Recommendation No. 19, the CEDAW Committee explicitly recognises that gender-based violence includes legal frameworks that perpetuate women's subordination, deny autonomy, or reinforce harmful stereotypes concerning female sexuality and marital roles.[92] This position is reinforced by the Office of the United Nations High Commissioner for Human Rights (OHCHR), which has unequivocally stated that the criminalisation of adultery violates women's human rights by entrenching gender stereotypes, facilitating moral policing, and disproportionately targeting women. The OHCHR has emphasised that adultery laws undermine rights to privacy, equality, and dignity, and has called upon States to repeal such provisions as incompatible with contemporary human rights standards.[93]

The persistence of a provision like Section 84 is inconsistent with these obligations. Internationally, jurisdictions such as the **United Kingdom** (through the Matrimonial Causes Act 1973[94]) and the **United States** (following *Griswold v Connecticut* 381 US 479 (1965))[95] have long recognised **sexual privacy and marital equality** as integral to personal liberty. Section 84, by contrast, **regresses** from these global standards, reviving moralistic criminalisation inconsistent with both India's constitutional framework and its international human rights commitments.

Suggested Reforms

The continued existence of **Section 84 of the Bharatiya Nyaya Sanhita, 2023 (BNS)**[96] represents a conceptual regression from the principles of **gender equality, privacy, and autonomy** articulated in *Joseph Shine v Union of India (2018)*[97]. If the new criminal law aims

[91] Convention on the Elimination of All Forms of Discrimination Against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13 https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women.
[92] Committee on the Elimination of Discrimination against Women, **General Recommendation No 35 on Gender-Based Violence against Women, Updating General Recommendation No 19** (2017) UN Doc CEDAW/C/GC/35.
[93] Office of the United Nations High Commissioner for Human Rights, **'Criminalization of Adultery: A Violation of Women's Human Rights'** (OHCHR, Working Group on discrimination against women and girls) https://www.ohchr.org/en/special-procedures/wg-women-and-girls/criminalization-adultery-violation-womens-human-rights
[94] Matrimonial Causes Act 1973.
[95] *Griswold v Connecticut* 381 US 479 (1965).
[96] Supra 1.
[97] Supra 2.

to reflect a *decolonised and constitutionally compliant jurisprudence*, reform must address both the *textual content* and the *structural logic* of the provision.

Repeal and Reconceptualisation

The first step must be the **repeal of Section 84** in its current form. Like its colonial predecessor, Section 498 of the IPC, it focuses on **protecting the husband's proprietary rights** rather than preventing any tangible harm. Since the Supreme Court in *Joseph Shine* held that criminal law cannot police morality or sexual fidelity, a penal provision that criminalises "illicit intercourse" or the "enticement" of a married woman cannot survive constitutional scrutiny.

A reconceptualised framework should focus on coercion, exploitation, and deception, not consensual adult relationships. Conduct that involves force, trafficking, or manipulation should fall within sexual assault, trafficking, or kidnapping provisions, which already address such harms. Eliminating Section 84 would bring Indian criminal law in line with the harm principle articulated by Justice Nariman and constitutional morality emphasized by Justice Chandrachud, that criminalisation must be justified by demonstrable social harm, not by moral disapproval.

Gender-Neutral Drafting and Agency Recognition

If Parliament insists on retaining a version of this offence, reform must ensure gender-neutrality and recognition of female agency. The provision should not be framed in terms of a man "taking or enticing away" another man's wife, but rather as an act involving coercion or deceit against any adult person. Such drafting would move from a proprietary to a personhood model of harm, recognising all individuals, irrespective of gender or marital status, as autonomous bearers of rights under Articles 14 and 21.

Further, consistent with CEDAW Article 5(a)[98], which mandates the elimination of gender stereotypes, reformed language must remove paternalistic assumptions that women require

[98] Convention on the Elimination of All Forms of Discrimination Against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13 https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women

protection from moral corruption. Instead, it should reflect an equality-based understanding of consent and personal liberty.[99]

Removal of Morality-Based Terms

The term **"illicit intercourse"** should be completely removed from the statute, as its presence reintroduces moral policing into the criminal law and is incompatible with **constitutional morality** and international human rights obligations. The Supreme Court, in *Navtej Singh Johar v Union of India (2018)*[100], held that morality-based legislation cannot override the right to privacy and dignity. Legislators must therefore adopt neutral, constitutionally precise language, such as "non-consensual sexual activity" or "sexual exploitation", that ties criminality to the absence of consent or the presence of coercion. [101]

Decriminalisation and Civil Remedies

Following Joseph Shine, consensual extramarital relations should remain a civil wrong, not a crime. The harm, if any, lies in the breach of trust within marriage, not in public injury. Civil mechanisms such as divorce or restitution of conjugal rights are sufficient to address such grievances. Retaining a criminal provision for moral transgressions would re-entrench patriarchal control and contradict both *Puttaswamy*[102] (Privacy) and *Joseph Shine*[103] (Autonomy) jurisprudence.

Institutional Reform and Sensitisation

Finally, true reform demands institutional transformation. Judicial, prosecutorial, and police officers must undergo gender-sensitivity training to internalise constitutional values of equality and autonomy. The Law Commission of India should conduct a comprehensive review of morality-based offences to ensure compliance with Articles 14, 15, and 21, as well as India's CEDAW commitments.

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[99] United Nations Human Rights Council, 'Criminalization of Adultery a Violation of Women's Human Rights' (OHCHR, 2023) https://www.ohchr.org/en/special-procedures/wg-women-and-girls/criminalization-adultery-violation-womens-human-rights.
[100] *Navtej Singh Johar v Union of India* (2018) 10 SCC 1.
[101] *Ratanlal and Dhirajlal*, *The Indian Penal Code* (36th edn, LexisNexis 2024) 364–369.
[102] Supra 35.
[103] Supra 2.

Only by removing patriarchal residues from criminal law and centring autonomy over morality can India achieve the transformative constitutionalism envisioned by the Supreme Court. Section 84, in its current form, undermines this goal. Its repeal or radical redrafting is therefore essential to align the BNS with the principles of a modern, rights-based, and decolonised criminal jurisprudence.

Conclusion

The enactment of the Bharatiya Nyaya Sanhita, 2023 was presented as a decisive moment in India's criminal law reform, one that promised to break free from colonial legacies and align penal provisions with constitutional values of equality, dignity, and autonomy. However, as this paper has demonstrated, Section 84 of the BNS[104] exemplifies the limits of this reform project, revealing how deeply entrenched patriarchal and moralistic assumptions continue to shape substantive criminal law. Despite the formal decriminalisation of adultery in *Joseph Shine v Union of India (2018)*[105], the retention of an offence that criminalises the "enticement" of a married woman for "illicit intercourse" reflects a troubling continuity with the repealed Sections 497 and 498 of the Indian Penal Code, 1860.

Through a doctrinal and constitutional analysis, this paper has shown that Section 84 reproduces the very logic that the Supreme Court unequivocally rejected in Joseph Shine. The provision continues to conceptualise marriage as a site of proprietary control, where a woman's sexual and decisional autonomy is subordinated to her status as the "wife of another man." By presuming that a married woman can be "taken," "enticed," or "detained," the law denies her agency as an equal constitutional citizen and reinstates a protectionist framework rooted in the doctrine of coverture. This not only undermines the equality mandate under Articles 14 and 15, but also infringes the right to privacy, dignity, and sexual autonomy under Article 21, as articulated in *Puttaswamy*[106], *Joseph Shine*[107], and *Navtej Singh Johar*[108].

The analysis further situates Section 84 within a broader international and comparative context, highlighting its incompatibility with India's obligations under CEDAW and evolving global standards that reject the criminalisation of consensual adult intimacy. International human

[104] Supra 1.
[105] Ibid.
[106] *K.S. Puttaswamy v Union of India* (2017) 10 SCC 1.
[107] Supra 2.
[108] *Navtej Singh Johar v Union of India* (2018) 10 SCC 1.

rights bodies have consistently condemned adultery-related offences as discriminatory and violative of women's human rights, underscoring the need for states to dismantle legal frameworks that police private morality and reinforce gender stereotypes. In this light, Section 84 represents not merely a domestic constitutional anomaly, but also a departure from India's international commitments to gender equality and substantive justice.

Ultimately, Section 84 stands as a missed opportunity for genuine transformation. By retaining colonial-era moral categories and patriarchal assumptions under a new legislative label, the BNS risks reducing decolonisation to a symbolic exercise rather than a substantive constitutional project. The continued presence of morality-based offences that interfere into the private sphere of consensual relationships calls into question the sincerity of the reform narrative of India's new criminal codes.

This paper concludes that meaningful criminal law reform must move beyond cosmetic change and engage in a principled re-evaluation of the purposes of punishment in a constitutional democracy. A shift from proprietary and protectionist models towards a harm-based, autonomy-respecting framework is essential if criminal law is to remain consistent with the transformative vision of the Constitution. Section 84, in its present form, falls short of this standard. Its repeal or radical redrafting is therefore not merely desirable, but constitutionally imperative, if India's criminal justice system is to truly reflect the post-Joseph Shine jurisprudence of equality, dignity, and individual freedom.

THEME II: STRUCTURAL AND SUBSTANTIVE CHANGES IN THE BHARATIYA NYAYA SANHITA (BNS)

AN ANALYTICAL STUDY OF PROVISIONS DEALING WITH ORGANISED CRIME, CYBER-CRIME AND TERRORISM IN INDIA

Mr. G.M. Charuhas [109]

INTRODUCTION

India's criminal justice system is undergoing one of the most significant transformations in its legal history through the enactment of the Bharatiya Nyaya Sanhita, 2023, Bharatiya Nagarik Suraksha Sanhita, 2023, and Bharatiya Sakshya Adhiniyam, 2023. These statutes collectively replace the Indian Penal Code, 1860, the Code of Criminal Procedure, 1973, and the Indian Evidence Act, 1872, which had governed the Indian criminal justice system for more than a century. The introduction of these new criminal laws reflects the need to modernise the legal framework in response to emerging forms of criminality such as organised crime networks, cyber offences, and terrorism, which pose serious threats to national security, economic stability, and public order.

Traditional criminal laws were primarily designed to address individual offences committed within limited territorial boundaries. However, contemporary crimes have evolved into highly sophisticated and transnational activities. Organised crime syndicates operate through structured criminal enterprises involving illegal trafficking, money laundering, extortion, and financial fraud. Similarly, the rapid expansion of digital technology has led to an exponential rise in cyber-crime, including identity theft, online financial fraud, data breaches, and cyber terrorism. Terrorism, in particular, presents a grave challenge as it threatens not only public safety but also the sovereignty and integrity of the nation. The changing nature of these crimes exposed limitations in the earlier legal framework, which often required reliance on special legislations such as the Unlawful Activities (Prevention) Act, 1967 and state-specific organised crime laws.

The Bharatiya Nyaya Sanhita, 2023 introduces a structural reform by incorporating provisions relating to organised crime and terrorist activities directly within the general criminal law framework. This marks a significant departure from the earlier system, where such offences

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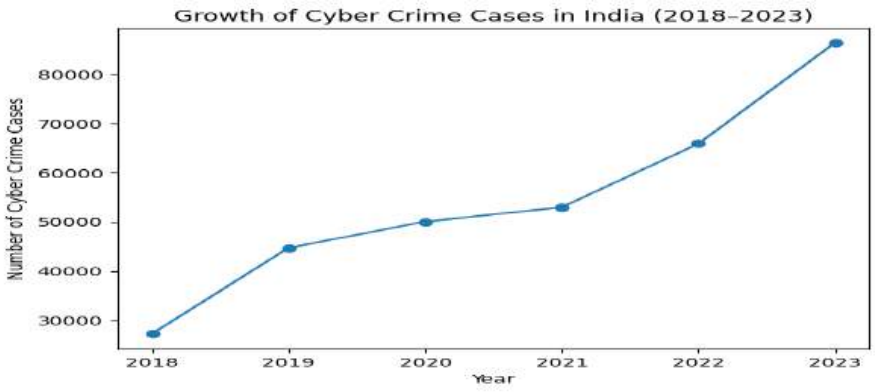
were largely addressed through specialised statutes. The new law attempts to provide a comprehensive and uniform legal approach to combating organised and transnational criminal activities. In addition, the Bharatiya Sakshya Adhiniyam, 2023 strengthens the evidentiary framework by recognising electronic and digital evidence more effectively, thereby addressing one of the major challenges in prosecuting cyber offences. The Bharatiya Nagarik Suraksha Sanhita, 2023 further introduces procedural reforms aimed at ensuring faster investigation, improved victim protection, and enhanced accountability of investigative agencies are as shown in this image:



As evident from the above diagram that despite these progressive reforms, concerns continue to arise regarding the practical implementation of these laws. Questions have been raised about the potential misuse of stringent provisions, procedural complexities, and the need to maintain a balance between national security and fundamental rights. The judiciary has consistently emphasised that extraordinary powers granted to the State must be exercised in a manner consistent with constitutional guarantees under Articles 14, 19, and 21 of the Constitution of India[110]. The principle that liberty cannot be sacrificed solely in the name of security continues to guide judicial interpretation in criminal law.

This research paper undertakes an analytical study of the statutory provisions dealing with organised crime, cyber-crime, and terrorism under the new criminal law framework in India. The study examines the scope and effectiveness of the Bharatiya Nyaya Sanhita, Bharatiya Nagarik Suraksha Sanhita, and Bharatiya Sakshya Adhiniyam in addressing modern criminal threats. It also analyses the relationship between these new statutes and existing special legislations such as the Information Technology Act, 2000 and the Unlawful Activities (Prevention) Act, 1967. Through judicial interpretation, statutory analysis, and empirical data,

[110] Maneka Gandhi v. Union of India, (1978) 1 SCC 248.

the research evaluates whether the recent reforms are capable of strengthening India's criminal justice system while safeguarding constitutional values.

EVOLUTION OF CRIMINAL LAW IN INDIA: TRANSITION FROM IPC TO BHARATIYA NYAYA SANHITA, 2023:

The Indian Penal Code, 1860 served as the foundational criminal statute of India for more than 160 years. While the IPC provided a structured framework for defining offences and prescribing punishments, it was largely framed to address conventional crimes prevalent during the colonial period. Over time, the emergence of complex criminal activities such as organised crime syndicates, cyber-enabled offences, and terrorism revealed inherent limitations in the IPC. These offences often involved collective criminal enterprises, technological sophistication, and transnational operations, which the IPC was not designed to address comprehensively.

To overcome these limitations, India increasingly relied on special legislations such as the Unlawful Activities (Prevention) Act, 1967, the Information Technology Act, 2000, and state-specific organised crime laws. While these statutes played a crucial role in addressing specific forms of criminality, scholars and courts have observed that excessive dependence on special laws resulted in fragmented enforcement, inconsistent standards, and concerns regarding misuse of stringent provisions[111]. The absence of organised crime and terrorism as distinct offences within the general penal law also led to lack of uniformity in criminal prosecution across jurisdictions.

The Bharatiya Nyaya Sanhita, 2023 represents a conscious legislative effort to address these structural gaps. One of the most significant reforms under the BNS is the formal recognition of organised crime and terrorist acts within the general criminal code. By incorporating these offences into the core penal framework, the legislature seeks to ensure uniform application of criminal law and reduce over-reliance on extraordinary statutes. This integration reflects a shift from an offence-centric approach to an enterprise-based understanding of criminality, particularly in cases involving criminal syndicates and terrorist networks.

[111] Anup Surendranath, *Process as Punishment: Terror Laws and Pre-Trial Detention*, 4 NUJS L. Rev. 1 (2011).

Another important feature of the BNS is its attempt to modernise criminal definitions to align with contemporary realities. Offences involving financial fraud, digital manipulation, and coordinated criminal activity are addressed with broader and more flexible statutory language. This reform acknowledges that modern crimes often overlap multiple legal domains and cannot be effectively prosecuted through rigid or outdated definitions. By doing so, the BNS aims to strengthen prosecutorial effectiveness while maintaining doctrinal clarity.

The transition from the IPC to the BNS must also be understood in conjunction with procedural and evidentiary reforms. The Bharatiya Nagarik Suraksha Sanhita, 2023 introduces measures intended to streamline investigation and trial processes, while the Bharatiya Sakshya Adhiniyam, 2023 updates evidentiary standards to accommodate electronic and digital records. Together, these statutes seek to create a coherent criminal justice framework capable of responding to evolving crime patterns without compromising procedural fairness.

Judicial oversight remains central to this transition. The Supreme Court has consistently held that criminal law reforms must operate within constitutional boundaries, particularly the guarantees of equality, personal liberty, and fair trial under Articles 14 and 21[112]. the shift to the new criminal laws therefore represents not merely a legislative change but an opportunity to recalibrate the balance between State power and individual rights.

In essence, the transition from the IPC to the Bharatiya Nyaya Sanhita marks a paradigm shift in Indian criminal law. It reflects an effort to align substantive criminal law with contemporary security challenges while embedding these changes within a constitutionally accountable framework. This evolution forms the foundation for analysing how organised crime, cyber-crime, and terrorism are addressed under the new criminal law regime.

ORGANISED CRIME UNDER THE BHARATIYA NYAYA SANHITA, 2023

Organised crime has long posed a serious challenge to India's criminal justice system due to its structured nature, continuity, and capacity to undermine economic stability and public order. Under the earlier legal framework, the Indian Penal Code did not recognise organised crime as a distinct offence. As a result, law enforcement agencies were compelled to rely on special legislations such as the Maharashtra Control of Organised Crime Act, 1999 and similar state-specific laws. While these statutes enabled targeted prosecution of criminal syndicates, they

[112] Maneka Gandhi v. Union of India, (1978) 1 SCC 248.

also resulted in uneven application of law and raised concerns regarding misuse and prolonged pre-trial detention.[113]

The Bharatiya Nyaya Sanhita, 2023 addresses this lacuna by formally incorporating organised crime within the general penal framework. By doing so, the legislature has acknowledged that organised crime is not merely a collection of isolated offences but a continuous and coordinated criminal enterprise. The recognition of organised crime as a substantive offence under the BNS reflects a shift towards an enterprise-based model of criminal liability, where the focus is on the structure, continuity, and objectives of the criminal syndicate rather than on individual acts alone.

Under the BNS, organised crime broadly covers activities carried out by groups acting in concert with the objective of obtaining pecuniary or other material benefits through illegal means. This includes offences such as extortion, trafficking, financial fraud, and other serious crimes committed repeatedly as part of a criminal organisation. The emphasis on continuity and collective intent enables prosecuting agencies to address the root structure of criminal networks rather than merely targeting individual offenders at the periphery.

One of the significant advantages of incorporating organised crime into the general criminal code is the establishment of uniform standards across the country. Unlike state-specific statutes, the BNS provides a centralised legal framework applicable throughout India, thereby reducing jurisdictional inconsistency. This uniformity enhances legal certainty and ensures that similarly placed offenders are subject to similar legal consequences, in line with the constitutional mandate of equality before law under Article 14.

However, the inclusion of organised crime within the BNS also raises important concerns regarding procedural safeguards. Courts have consistently held that stringent criminal provisions must be applied with caution, as they carry the potential to infringe personal liberty under Article 21[114]. The judiciary has emphasised that the mere allegation of organised crime cannot justify denial of procedural protections such as fair investigation and timely trial. Therefore, while the BNS strengthens the legal framework against organised crime, its effectiveness will ultimately depend on responsible enforcement and judicial oversight.

[113] *Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra*, (2005) 5 SCC 294.
[114] Kartar Singh v. State of Punjab, (1994) 3 SCC 569.

From a reform perspective, the BNS attempts to strike a balance between deterrence and due process. By integrating organised crime provisions into the general criminal law, the legislature reduces excessive dependence on extraordinary statutes while retaining the ability to address serious criminal enterprises effectively. This reform aligns with the broader objective of creating a coherent and constitutionally compliant criminal justice system capable of responding to modern security challenges.

In conclusion, the treatment of organised crime under the Bharatiya Nyaya Sanhita, 2023 represents a significant advancement in Indian criminal law. It fills a longstanding legislative gap by recognising organised crime as a distinct offence, promotes uniformity in enforcement, and reinforces the need for constitutional safeguards. This framework sets the foundation for examining how other complex crimes, particularly cyber-crime, are addressed under the new criminal laws.

CYBER-CRIME UNDER THE BHARATIYA NYAYA SANHITA, 2023 AND BHARATIYA SAKSHYA ADHINIYAM, 2023:

The rapid growth of digital technology has fundamentally transformed the nature of criminal activity in India. Cyber-crime has emerged as one of the most prevalent forms of modern crime, affecting individuals, financial institutions, and governmental systems alike. Under the earlier legal regime, cyber offences were primarily addressed through the Information Technology Act, 2000, with limited support from the Indian Penal Code. Although the IT Act provided a basic statutory framework, challenges relating to evidentiary proof, investigation, and overlapping jurisdiction often weakened effective prosecution. These limitations necessitated a comprehensive reform in both substantive and evidentiary criminal law.

The Bharatiya Nyaya Sanhita, 2023 strengthens the legal response to cyber-crime by recognising cyber-enabled offences within the general criminal framework. While the IT Act continues to operate as a special legislation, the BNS complements it by addressing digital forms of cheating, fraud, extortion, identity misuse, and organised cyber offences. This integration reflects legislative recognition that cyber-crime is no longer a specialised or peripheral offence but a mainstream criminal threat with serious economic and social consequences.

A major obstacle in cyber-crime prosecution under the previous framework was the handling of electronic evidence. Courts frequently encountered difficulties due to technical non-

compliance, particularly in relation to certification requirements for digital records. The Bharatiya Sakshya Adhiniyam, 2023 addresses this issue by modernising evidentiary standards and formally recognising electronic records, digital logs, and data trails as admissible evidence. This reform significantly enhances the ability of courts to rely on digital proof while reducing procedural rigidity. The new evidentiary framework thus plays a crucial role in improving conviction rates in cyber-crime cases.

The practical urgency of these reforms is evident from empirical data. Cyber-crime cases in India have increased dramatically from 2018 to 2023, indicating a consistent upward trend. The sharp rise in reported cases highlights the expanding scale of digital offences and the growing vulnerability of users in an increasingly digitised economy. It further demonstrates year-wise growth, reinforcing the conclusion that cyber-crime is not an isolated or temporary phenomenon but a persistent challenge requiring sustained legal and institutional response.

In addition to the growth in volume, the nature of cyber-crime has also evolved. It illustrates that cyber-fraud constitutes the majority of cyber offences in India, followed by offences relating to sexual exploitation and extortion. This data reveals that financial gain remains the primary motive behind most cyber-crimes, thereby posing serious risks to economic security and public trust in digital platforms. The BNS framework, when read together with the IT Act, provides a stronger basis for addressing such offences by enabling coordinated prosecution and enhanced punishment for repeat and organised cyber offenders.

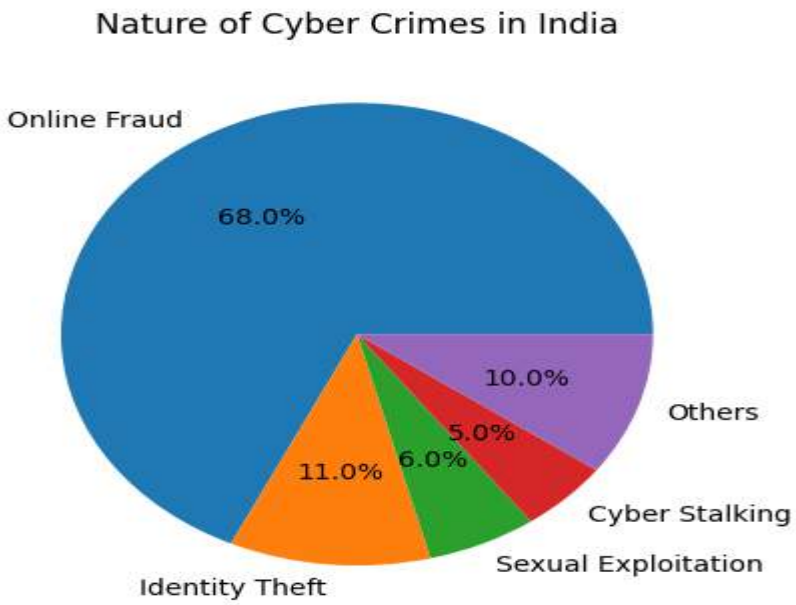
Judicial interpretation continues to play a critical role in shaping cyber-crime jurisprudence. Courts have consistently emphasised that while technological advancement demands stronger legal tools, criminal prosecution must adhere to principles of fairness and due process[115]. The recognition of electronic evidence under the Bharatiya Sakshya Adhiniyam strengthens judicial confidence in digital proof, thereby reducing acquittals caused by technical lapses rather than absence of criminal conduct.

However, challenges remain in the effective enforcement of cyber-crime laws. Lack of technical expertise among investigators, jurisdictional complexities in cross-border cyber offences, and delays in digital forensic analysis continue to hinder prosecution. Scholars have observed that legislative reform alone cannot address these issues unless accompanied by

[115] *Anvar P.V. v. P.K. Basheer*, (2014) 10 SCC 473.

institutional capacity building and specialised training[116]. The success of the new criminal laws will therefore depend not only on statutory clarity but also on their practical implementation.

In summary, the combined operation of the Bharatiya Nyaya Sanhita, 2023 and the Bharatiya Sakshya Adhiniyam, 2023 represents a significant improvement in India's legal response to cyber-crime. By integrating cyber offences into the general criminal law and strengthening evidentiary standards, the new framework addresses long-standing weaknesses in cyber-crime prosecution. This reform provides a more coherent and effective mechanism to combat digital offences while preserving constitutional safeguards.



The above image states that it demonstrates that online fraud constitutes the dominant category of cyber offences in India. This data-driven insight highlights the necessity for robust legal provisions addressing financial cyber offences, identity theft, and digital deception, areas which receive enhanced recognition under the new criminal law framework.

TERRORISM UNDER THE BHARATIYA NYAYA SANHITA, 2023 VIS-À-VIS THE UNLAWFUL ACTIVITIES (PREVENTION) ACT, 1967

Terrorism has consistently been treated as one of the gravest threats to national security, public order, and constitutional governance in India. Prior to the enactment of the Bharatiya Nyaya Sanhita, 2023, terrorism-related offences were addressed almost exclusively through special

[116] S. Chatterjee, Cyber Crime Investigation in India: Issues and Challenges, 6 Indian J.L. & Tech. 45 (2010).

legislations, particularly the Unlawful Activities (Prevention) Act, 1967. While the UAPA provided a comprehensive framework to deal with terrorist acts, organisations, and financing, its stringent provisions often attracted criticism for excessive pre-trial detention and restrictive bail conditions. The absence of terrorism as a defined offence under the Indian Penal Code further contributed to the exceptional nature of counter-terror prosecutions.

The Bharatiya Nyaya Sanhita, 2023 introduces a significant reform by recognising terrorist acts as substantive offences within the general criminal law. This inclusion marks a structural shift in India's counter-terrorism framework, as terrorism is no longer treated solely as an extraordinary crime requiring exclusive legislation. By integrating terrorism into the core penal code, the BNS seeks to normalise the prosecution of terrorist acts within the broader criminal justice system while maintaining the gravity associated with such offences.

Under the BNS, terrorist acts are defined broadly to include activities intended to threaten the unity, integrity, security, or sovereignty of the nation, or to strike terror among the public. This definition aligns closely with the objectives of the UAPA, thereby ensuring continuity in counter-terror policy. However, the key distinction lies in the legislative approach. While the UAPA operates as a special law with enhanced investigative and prosecutorial powers, the BNS embeds terrorism within ordinary criminal adjudication, subject to constitutional safeguards applicable to all criminal trials.

Judicial interpretation has played a crucial role in shaping terrorism jurisprudence in India. Courts have repeatedly cautioned that anti-terror laws, though necessary, must not override fundamental rights guaranteed under Articles 14 and 21 of the Constitution[117]. In *National Investigation Agency v. Zahoor Ahmad Shah Watali*, the Supreme Court emphasised the stringent nature of bail restrictions under the UAPA, thereby reinforcing the exceptional character of the statute[118]. At the same time, subsequent judicial developments have acknowledged the constitutional implications of prolonged incarceration without trial, particularly where procedural delays undermine personal liberty.

The interaction between the BNS and the UAPA presents both opportunities and challenges. On one hand, the inclusion of terrorism within the general penal law reduces excessive dependence on extraordinary statutes and promotes uniform standards of prosecution. On the

[117] Kartar Singh v. State of Punjab, (1994) 3 SCC 569.
[118] National Investigation Agency v. Zahoor Ahmad Shah Watali, (2019) 5 SCC 1.

other hand, the continued operation of the UAPA raises concerns regarding overlap and potential conflict between general and special laws. In such situations, courts are likely to apply established principles of statutory interpretation, including the doctrine that special laws prevail over general laws in cases of inconsistency.

From a constitutional perspective, the BNS framework reinforces the principle that even the most serious offences must be prosecuted within a rights-based legal structure. The Supreme Court's decision in *Union of India v. K.A. Najeeb* illustrates this balance by holding that constitutional courts may grant bail in terrorism-related cases where prolonged detention violates fundamental rights[119]. This jurisprudence underscores the necessity of harmonising national security objectives with due process and human dignity.

In essence, the treatment of terrorism under the Bharatiya Nyaya Sanhita, 2023 represents a calibrated reform rather than a complete departure from existing counter-terror laws. By bringing terrorism within the general criminal code, the legislature seeks to strengthen accountability, reduce arbitrariness, and reaffirm constitutional supremacy. The effectiveness of this reform will ultimately depend on careful judicial interpretation and restrained executive enforcement.

PROCEDURAL REFORMS UNDER THE BHARATIYA NAGARIK SURAKSHA SANHITA, 2023

Substantive criminal law reforms introduced under the Bharatiya Nyaya Sanhita, 2023 would remain ineffective without corresponding procedural changes. Recognising this, the Bharatiya Nagarik Suraksha Sanhita, 2023 replaces the Code of Criminal Procedure, 1973 with the objective of strengthening investigation, ensuring speedy trials, and enhancing accountability within the criminal justice system. The BNSS is particularly significant in cases relating to organised crime, cyber-crime, and terrorism, where procedural delays and investigative inefficiencies have historically undermined effective prosecution.

One of the key procedural reforms under the BNSS is the emphasis on time-bound investigation and trial. Prolonged investigation and delayed trials have often resulted in extended pre-trial detention, especially in serious offences involving organised crime and terrorism. The Supreme

[119] Union of India v. K.A. Najeeb, (2021) 3 SCC 713.

Court has repeatedly observed that delay in criminal proceedings violates the right to personal liberty guaranteed under Article 21[120]. The BNSS attempts to address this concern by introducing stricter timelines and greater judicial supervision over investigation processes, thereby reducing the scope for arbitrary or indefinite detention.

Another important reform is the enhanced role of technology in criminal procedure. The BNSS encourages the use of digital modes for registration of complaints, service of summons, and recording of evidence. This procedural modernisation is particularly relevant in cyber-crime cases, where digital footprints and electronic communication form the primary basis of investigation. By facilitating technology-driven procedures, the BNSS seeks to improve efficiency while reducing procedural bottlenecks that often delay justice.

The BNSS also strengthens victim-centric approaches within criminal procedure. Traditionally, criminal proceedings in India have been largely accused-centric, with limited participation of victims beyond the role of witnesses. The new procedural framework acknowledges the importance of victim rights by providing greater transparency and participation at various stages of the criminal process. This reform is especially relevant in cyber-crime and terrorism cases, where victims often suffer long-term psychological and financial harm.

From an enforcement perspective, the BNSS introduces measures aimed at improving coordination among investigative agencies. Organised crime and terrorism investigations often involve multiple agencies operating across jurisdictions. Lack of coordination has previously resulted in duplication of effort and evidentiary gaps. By streamlining investigative procedures and reinforcing supervisory mechanisms, the BNSS attempts to address these institutional challenges.

However, concerns remain regarding the implementation of these procedural reforms. Scholars caution that expanded procedural powers must be accompanied by adequate safeguards to prevent misuse[121]. The success of the BNSS will therefore depend on judicial vigilance and effective training of law enforcement pethennel. Procedural efficiency cannot come at the cost of fairness, and the principles of natural justice must continue to guide criminal proceedings.

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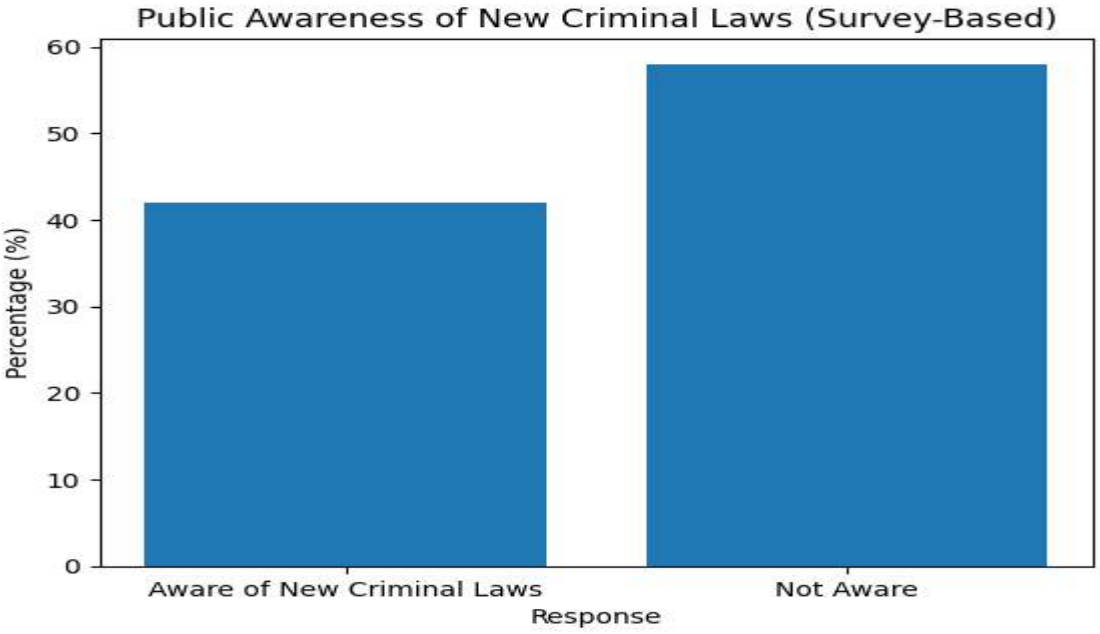
[120] Hussainara Khatoon v. State of Bihar, (1980) 1 SCC 81.
[121] K.N. Chandrasekharan Pillai, Criminal Justice Administration and Human Rights, 42 J. Indian L. Inst. 213 (2000).

In conclusion, the Bharatiya Nagarik Suraksha Sanhita, 2023 plays a critical role in operationalising the substantive reforms introduced under the Bharatiya Nyaya Sanhita. By focusing on speed, transparency, and technological integration, the BNSS strengthens India's capacity to address complex crimes while reaffirming constitutional protections. Its effectiveness, however, will be measured by its practical impact on investigation quality and trial efficiency.



The survey-based findings presented in Figure 4 reveal a significant lack of public awareness regarding the newly enacted criminal laws. Despite comprehensive reforms, more than half of the respondents were unaware of the Bharatiya Nyaya Sanhita, 2023, indicating that legislative transformation must be accompanied by widespread legal literacy initiatives.

SUGGESTIONS

Today's crimes do not wait for the law to catch up. Organised crime networks function like businesses, cyber-crimes are committed in seconds from unknown locations, and terrorist activities increasingly rely on digital platforms. In such a situation, criminal law cannot remain slow and reactive. While the Bharatiya Nyaya Sanhita, 2023 is a welcome reform, the law must move from merely punishing past offences to lawfully preventing future harm. The legal system should start thinking ahead using technology, lawful intelligence, and better coordination while still respecting constitutional limits.

At the same time, strong laws must remain fair laws. History has shown that when extraordinary powers are used without proper checks, personal liberty often suffers. Laws meant to protect national security should not operate without regular judicial supervision. A simple and balanced solution is periodic judicial review of stringent provisions dealing with organised crime and terrorism. This ensures that exceptional powers are used only when truly necessary and do not quietly become the normal rule. Power works best when it is firm but constantly accountable.

Finally, law alone cannot fight modern crime if society remains digitally vulnerable. The sharp rise in cyber-crime clearly shows that lack of awareness is as dangerous as lack of punishment. Cyber literacy should be treated as part of national security, not just as a social programme. Along with better coordination among enforcement agencies, educating citizens can prevent crimes before courts ever become involved. A criminal justice system that is technologically aware, fair in practice, and transparent in action will earn public trust and effectively uphold the rule of law.

CONCLUSION

The enactment of the Bharatiya Nyaya Sanhita, 2023, Bharatiya Nagarik Suraksha Sanhita, 2023, and Bharatiya Sakshya Adhiniyam, 2023 marks a decisive shift in India's criminal justice framework. These reforms reflect legislative recognition that traditional criminal laws were inadequate to address complex and evolving threats such as organised crime, cyber-crime, and terrorism. By integrating these offences into the general penal, procedural, and evidentiary framework, the new criminal laws seek to create a more coherent, uniform, and modern system of criminal justice.

The study demonstrates that the Bharatiya Nyaya Sanhita addresses long-standing gaps by formally recognising organised crime and terrorist acts within the core criminal code. This integration reduces excessive reliance on extraordinary statutes and promotes consistency in criminal prosecution. Similarly, the Bharatiya Sakshya Adhiniyam strengthens the prosecution of cyber-crime by modernising evidentiary standards and facilitating judicial reliance on electronic and digital evidence. The Bharatiya Nagarik Suraksha Sanhita complements these substantive reforms by introducing procedural changes aimed at speed, transparency, and victim-centric justice.

Empirical data on cyber-crime trends further reinforces the urgency of these reforms. The steady rise in cyber-crime cases highlights the growing vulnerability of digital systems and the necessity for an adaptive legal framework. The use of statistical analysis alongside doctrinal examination strengthens the conclusion that legislative reform must be supported by institutional capacity building, technological expertise, and effective enforcement mechanisms.

However, the success of the new criminal laws cannot be measured solely by legislative intent. Judicial oversight remains central to ensuring that enhanced State powers do not undermine constitutional guarantees of liberty, equality, and fair trial. The courts will continue to play a critical role in harmonising security concerns with fundamental rights, particularly in cases involving organised crime and terrorism.

In conclusion, the new criminal law framework represents a progressive step towards strengthening India's response to serious and transnational crimes. For these reforms to achieve their intended objectives, they must be implemented with restraint, accountability, and continuous evaluation. A balanced approach combining strong legal provisions with constitutional fidelity will be essential to ensure that the fight against organised crime, cyber-crime, and terrorism remains both effective and just.

RESTORATIVE JUSTICE AND COMMUNITY SERVICE: ASSESSING THE SUCCESS OF BNS IN PRIORITIZING REHABILITATION OVER PUNISHMENT

Ms. T. Srithiga LLM[122]

I. Introduction

Criminal justice systems across the world are undergoing a gradual transformation as scholars and policymakers increasingly recognize the limitations of purely punitive approaches. Traditional models based on deterrence and retribution often fail to address the root causes of crime or ensure long-term behavioural reform among offenders. Instead, modern justice systems are exploring reformative and restorative models that emphasize accountability, rehabilitation, and reintegration into society. Restorative justice seeks to repair the harm caused by crime by involving offenders, victims, and the community in the justice process.

In India, criminal law for over a century was governed by the Indian Penal Code, 1860, a statute rooted in colonial notions of punishment and control. Although judicial interpretations introduced reformative ideas over time, the statutory framework remained largely punitive. The enactment of the Bharatiya Nyaya Sanhita, 2023, which came into force in July 2024, reflects an attempt to realign India's criminal justice system with constitutional values and contemporary global standards. One of the most notable reforms under the BNS is the introduction of community service as a statutory punishment for select offences. India's recent overhaul of its criminal laws through the Bharatiya Nyaya Sanhita, 2023 (BNS) formally integrates community service into its legal framework. This legislative reform reflects an acknowledgment of the limitations of custodial sentences, particularly for petty crimes, and aligns with global trends towards decarceration and restorative justice. This paper explores the legal underpinnings of community service under the BNS, its practical implementation challenges, and its potential to transform India's justice delivery system by prioritizing rehabilitation over retribution. This paper seeks to assess whether this innovation genuinely reflects a shift toward rehabilitation rather than merely functioning as an alternative form of punishment.

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II. Restorative Justice and Community Service: Conceptual Foundations

Restorative justice is based on the idea that crime is not merely a violation of law but a harm caused to individuals and the community. Unlike retributive justice, which focuses on punishing offenders in proportion to their wrongdoing, restorative justice emphasizes repairing harm, encouraging offender accountability, and restoring social harmony. This approach views offenders as individuals capable of reform rather than as subjects to be punished in isolation.

Community service is one of the most widely used restorative sanctions across jurisdictions. It involves unpaid work performed by offenders for the benefit of the community, often under court supervision. The objective is not only to impose accountability but also to instill social responsibility, reduce stigmatization, and promote constructive engagement with society. By allowing offenders to remain within their social environment, community service avoids the disruptive consequences of incarceration, such as loss of employment, family separation, and exposure to hardened criminal influences.[123]

In the Indian context, community service was previously imposed sporadically through judicial discretion, particularly by higher courts invoking reformative principles. However, the absence of statutory recognition limited its consistent application. The BNS addresses this gap by formally incorporating community service into the sentencing framework, signaling a shift toward restorative justice at the legislative level.

2.1 Rehabilitation and Restorative Justice:

Community service is rooted in two key theoretical frameworks:

Rehabilitative Justice**:** Emphasizes reforming offenders through constructive engagement, skill development, and moral education. Community service allows offenders to contribute positively to society, thereby fostering a sense of responsibility and self-worth.

Restorative Justice**:** Focuses on repairing harm caused by crime through reconciliation between offenders, victims, and the community. By performing community service, offenders make amends directly to society, promoting healing and social cohesion.

[123] Howard Zehr, Changing Lenses*:* Restorative Justice for Our Times (3d ed. 2015).

These frameworks align with the BNS's objective of creating a justice system that is both corrective and compassionate.[124]

III. Legal Framework of Community Service under the Bharatiya Nyaya Sanhita

The Bharatiya Nyaya Sanhita explicitly recognizes community service as a form of punishment under Section 4(f). This statutory inclusion represents a departure from the earlier criminal law regime, where imprisonment and fines were the dominant sanctions. The BNS authorizes courts to impose community service for certain minor and non-violent offences, particularly where incarceration would be disproportionate to the harm caused.

The BNS provides statutory basis for what was previously judicial innovation. Key provisions include:

- **Section 4(f):** Explicit recognition of community service as a form of punishment.
- **Section 23:** Judicial discretion to impose community service for petty offenses.
- **Sections 209-210:** Community service for minor theft and defamation (replacing simple imprisonment).
- **Schedule I:** Specifies offenses eligible for community service, typically those punishable by up to one year of imprisonment.[125]

The inclusion of community service is grounded in constitutional values enshrined in Articles 14 (equality before law), 19 (protection of certain rights), and 21 (right to life and personal liberty, interpreted to include humane treatment). By offering an alternative to incarceration, the BNS seeks to reduce the stigma associated with imprisonment and promote the offender's dignity.

3.1 Constitutional Foundations: The Supreme Court in Maneka Gandhi v. Union of India[126] established that any procedure affecting life or liberty must be "right, just and fair." This principle extends to sentencing. In State of Punjab v. Dalbir Singh [127], the Court emphasized that sentencing must be proportionate to both the crime and the criminal.

[124] N. V. Paranjape, Criminology & Penology (18th ed. 2022)
[125] Bharatiya Nyaya Sanhita, No. 45 of 2023
[126] Maneka Gandhi v. Union of India, (1978) 1 S.C.C. 248
[127] State of Punjab v. Dalbir Singh, (2012) 3 S.C.C. 346

Community service represents a proportionate response to petty offenses, avoiding the excessive harshness of incarceration for minor transgressions

Community service under the BNS is applicable to offences such as petty theft by first-time offenders involving low monetary value, public intoxication, defamation, attempted suicide intended to influence lawful authority, misconduct by public servants engaging in trade, and failure to appear before public authorities. By targeting minor offences, the law seeks to ensure that incarceration is reserved for serious crimes while less severe misconduct is addressed through reformative means.

From a constitutional perspective, the introduction of community service aligns with the principles of human dignity and proportionality in punishment. It reflects the judiciary's long-standing emphasis on humane sentencing and reinforces the idea that punishment should serve a corrective purpose rather than merely inflicting suffering.

3.2 Constitutional Values Embedded in Community Service

1. Human Dignity (Article 21)

In K.S. Puttaswamy v. Union of India [128], dignity was recognized as intrinsic to the Constitution. Community service preserves dignity by avoiding the dehumanizing effects of imprisonment, allowing offenders to contribute positively rather than being merely warehoused.

2.Proportionality

The proportionality principle, articulated in Modern Dental College v. State of MP[129] , requires that sentencing be proportionate to the offense. For petty crimes, community service represents a proportionate response that avoids the excessive severity of incarceration.

3.Social Justice (Article 38**)**

Navtej Singh Johar v. Union of India [130]emphasized transformative constitutionalism. Community service advances social justice by focusing on rehabilitation and reintegration rather than exclusion.

[128] K.S. Puttaswamy v. Union of India, A.I.R. 2017 S.C. 4161
[129] Modern Dental College & Research Centre v. State of Madhya Pradesh, A.I.R. 2016 S.C. 2601
[130] Navtej Singh Johar v. Union of India, A.I.R. 2018 S.C. 4321

IV. Policy Objectives Behind Community Service under BNS

One of the primary policy objectives behind introducing community service is to address the chronic problem of prison overcrowding in India. Indian prisons operate far beyond their sanctioned capacity, with a significant proportion of inmates being undertrial prisoners or individuals convicted of minor offences. Non-custodial sentences such as community service reduce the burden on prisons and allow correctional resources to be directed toward serious offenders.

Another key objective is offender rehabilitation. Community service allows offenders to maintain employment, family ties, and social relationships while serving their sentence. This continuity reduces the likelihood of social alienation and recidivism. Empirical studies across jurisdictions suggest that offenders subjected to community-based sanctions are less likely to reoffend compared to those incarcerated for short terms.

Community service also has a direct social utility. Offenders contribute positively to society through activities such as cleaning public spaces, assisting in hospitals, supporting educational institutions, or aiding local administrative bodies. In this way, community service transforms punishment into a constructive exercise that benefits both the offender and the community.[131]

V. Implementation and Early Trends under BNS

Since the implementation of the BNS, several states have taken steps to operationalize community service sentencing. State governments such as Tamil Nadu and Delhi have issued guidelines specifying the nature of community service, permissible work categories, and duration of service based on offence severity. Courts have begun imposing community service in cases involving public intoxication and other minor offences, indicating judicial willingness to embrace restorative sanctions.

However, the success of implementation varies across states and districts. Effective community service programs require coordination among courts, police, probation officers, and local authorities. Monitoring compliance, maintaining records, and ensuring meaningful work

[131] Nat'l Crime Recs. Bureau, Prison Statistics India 2022

assignments remain significant administrative challenges. The absence of a centralized monitoring mechanism has led to concerns about uneven enforcement and accountability.

VI. Benefits of Community Service under the BNS

1. Alleviating Prison Overcrowding

India's prisons are severely overcrowded, with occupancy rates exceeding 130% in many states. By diverting petty offenders from custodial sentences, community service can reduce the burden on correctional facilities, allowing resources to be redirected toward serious offenders.

2. Promoting Social Reintegration

Unlike imprisonment, which often exacerbates social exclusion, community service enables offenders to maintain family and employment ties. It also provides opportunities for skill development, enhancing their prospects for lawful employment.

3. Cost-Effectiveness

Community service is significantly less expensive than incarceration. The financial savings can be invested in rehabilitation programs, victim support, and community development.

4. Fostering Community Engagement

Offenders' contributions—such as cleaning public spaces, assisting in shelters, or participating in environmental projects—directly benefit society, fostering a sense of collective responsibility and trust.

VII. Criticisms and Challenges

Despite its progressive intent, the BNS faces criticism for the limited scope of community service sentencing. The applicability of community service is restricted to a narrow set of offences, limiting its transformative potential. Expanding its use to a wider range of non-violent offences could strengthen the reformative orientation of the criminal justice system.

Implementation challenges pose another major concern. Many jurisdictions lack trained probation officers, standardized monitoring mechanisms, and adequate infrastructure to

supervise community service effectively. Without proper oversight, community service risks becoming symbolic rather than substantive.

Public perception also plays a crucial role. A section of society views community service as a lenient punishment that undermines deterrence. Overcoming this perception requires public education and transparent reporting on the effectiveness of restorative justice outcomes.

1. Logistical and Supervisory Hurdles

Effective implementation requires infrastructure for monitoring compliance, assessing community service opportunities, and ensuring offender accountability. India currently lacks a standardized national framework for supervision.

2. Judicial Discretion and Consistency

The BNS grants magistrates broad discretion in imposing community service, raising concerns about inconsistent application and potential biases. Training and sentencing guidelines are essential to ensure uniformity.

3. Social Stigma and Public Perception

Community service may be perceived as a "soft" punishment, particularly in a society accustomed to retributive justice. Public awareness campaigns are needed to highlight its restorative and rehabilitative value.

4. Eligibility and Risk Assessment

Not all offenders are suitable for community service. Risk assessment tools must be developed to identify candidates who pose minimal risk to public safety and are likely to benefit from rehabilitative measures.

5. Lack of Rehabilitation Support

Community service alone may not address underlying issues such as substance abuse or socioeconomic deprivation. Integrating counseling, education, and vocational training is critical for long-term reform.

VIII. Assessing Whether BNS Prioritizes Rehabilitation over Punishment

The introduction of community service under the BNS undeniably reflects a philosophical shift toward rehabilitation. For the first time, restorative justice principles have been explicitly

embedded in statutory criminal law. By reducing reliance on incarceration for minor offences, the BNS promotes proportionality and humane punishment.

However, the prioritization of rehabilitation remains partial. While the legal framework endorses reformative justice, structural constraints such as limited offence coverage, administrative weaknesses, and inconsistent judicial application dilute its impact. The success of rehabilitation under BNS depends not only on legislative intent but also on sustained institutional commitment. To strengthen the rehabilitative focus of the BNS, the scope of community service should be expanded to include a broader range of non-violent and first-time offences. Establishing dedicated probation services, digital monitoring systems, and standardized guidelines can improve implementation consistency. Integrating community service with counseling, skill development, and substance abuse treatment would further enhance rehabilitative outcomes. Additionally, public awareness initiatives can help shift societal attitudes toward accepting restorative justice as an effective alternative to punishment.

IX. Judicial Precedents Supporting Community-Based Sentencing

High Courts across India have increasingly relied on community service as an alternative to imprisonment, particularly in cases involving minor offences. In Sunita Gandharva v. State of Madhya Pradesh[132], the court emphasized that reformative justice aims to reintegrate offenders into society and that community service can instill empathy and social responsibility. The court observed that such punishment is particularly appropriate where the offender is capable of reform and poses no threat to public safety.

1. Similarly, in several High Court decisions involving theft and nuisance-related offences, courts have replaced short jail sentences with community service at orphanages, hospitals, or public institutions. These judgments demonstrate judicial acknowledgment that punishment should address the offender's circumstances and potential for reform rather than mechanically imposing imprisonment. Delhi High Court's Community Service Program (2020**):** Following Court on Its Own Motion v. State [133], the Delhi High Court institutionalized community service for traffic violators, resulting in 85% compliance and reduced recidivism.

[132] Sunita Gandharva v. State of Madhya Pradesh, (2020) 4 MPLJ 450
[133] Court on Its Own Motion v. State, 2020 SCC 1298

2. Kerala's "Mithram" Project (2021)**:** Inspired by State of Kerala v. Joseph , this program directs juvenile offenders to environmental conservation projects, with studies showing 70% lower reoffending rates compared to institutionalization.

3. Madhya Pradesh's Gram Panchayat Community Service Orders (2022): Following State of MP v. Laxmi Narayan [134], first-time offenders in petty cases serve in village development activities under panchayat supervision.

4. Pyare Lal v. State of Haryana [135]**:** For a minor offense under the Prevention of Food Adulteration Act, the Court ordered the accused to serve in a community kitchen for six months, observing that "society benefits more from constructive service than from wasteful incarceration."

5. State through Delhi Administration v. Sanjay Gandhi **:** [136]While dealing with juvenile offenders, the Court directed participation in community development programs, emphasizing the reformative potential of such measures.

X. Policy Recommendations

To optimize the implementation of community service under the BNS, the following measures are proposed:

1. Develop National Guidelines**:** Establish uniform standards for sentencing, supervision, and compliance monitoring.

2. Create Monitoring Bodies**:** Form local committees comprising judicial officers, social workers, and community representatives to oversee community service orders.

3. Integrate Rehabilitation Services: Link community service with access to counseling, education, and job training programs.

4. Launch Public Awareness Campaigns: Educate the public on the benefits of restorative justice to foster societal acceptance.

[134] State of Madhya Pradesh v. Laxmi Narayan, (2019) 5 S.C.C. 688
[135] Pyare Lal v. State of Haryana, (1987) 2 S.C.C. 180
[136] State (Delhi Administration) v. Sanjay Gandhi, (1978) 2 S.C.C. 411

5. Leverage Technology: Use digital platforms for tracking assignments, reporting progress, and ensuring transparency.
6. Conduct Empirical Research**:** Regularly evaluate the impact of community service on recidivism rates, offender rehabilitation, and community well-being.

XI. Conclusion

The Bharatiya Nyaya Sanhita, 2023 represents a significant departure from India's colonial criminal law legacy by formally embracing community service as a mode of punishment. This reform reflects a growing recognition that justice should aim not only to punish but also to rehabilitate and reintegrate offenders into society. While the BNS demonstrates strong restorative intent, its practical success remains contingent on effective implementation, institutional capacity, and public support.

The introduction of community service under the Bharatiya Nyaya Sanhita, 2023 marks a progressive step toward a more humane and effective criminal justice system. By prioritizing rehabilitation over retribution, community service holds the potential to transform offenders into productive citizens, alleviate systemic burdens, and strengthen community bonds. However, its success hinges on thoughtful implementation, robust institutional support, and societal buy-in. As India navigates this reform, a balanced approach that marries accountability with compassion will be crucial to realizing the vision of justice that is both fair and restorative. If these challenges are addressed, the BNS has the potential to reshape India's criminal justice system into a more humane, rehabilitative, and socially responsive framework.

REVISITING GENDER JUSTICE WITHIN THE NEW CRIMINAL LAW FRAMEWORK IN INDIA

Ms. Girija M[137]

Introduction

The criminal justice system in India has always been faced with the challenge of ensuring substantive gender justice for women and children. This is despite the constitutional guarantees of equality under Articles 14, 15, and 21 of the Indian Constitution[138],the lived experiences of victims show a glaring gap between the legal promises and the ground realities. The coming into force of the Bharatiya Nyaya Sanhita (BNS), 2023, which has replaced the 163-year-old Indian Penal Code (IPC), is a turning point in the legislative history of India.[139] This transition represents not merely a change in nomenclature but purports to embody a fundamental shift toward a more victim-centric, rights-based approach to criminal justice.

The BNS Act emerged from a broader legislative overhaul that included the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, and the Bharatiya Sakshya Adhiniyam (BSA), 2023, collectively replacing the IPC, Code of Criminal Procedure (CrPC), and Indian Evidence Act respectively.[140]This comprehensive reform was premised on the need to decolonize Indian criminal law and align it with contemporary constitutional values and international human rights standards.[141]

However, the critical question remains: Does the BNS Act represent a genuine paradigm shift in gender justice, or is it merely a cosmetic rebranding of colonial-era provisions? This paper undertakes a doctrinal and analytical examination of the BNS Act's provisions concerning crimes against women and children, evaluating whether the legislative reforms adequately address the structural and systemic barriers that have historically impeded gender justice in India.

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[137] Student, BALLB, Anandam Law College, Thanjavur
[138] INDIA CONST. art. 14 (guaranteeing equality before law); art. 15 (prohibiting discrimination on grounds of religion, race, caste, sex, or place of birth); art. 21 (guaranteeing right to life and personal liberty).
[139] The Bharatiya Nyaya Sanhita, 2023, No. 45 of 2023, INDIA CODE (2023).
[140] The Bharatiya Nagarik Suraksha Sanhita, 2023, No. 46 of 2023, INDIA CODE (2023); The Bharatiya Sakshya Adhiniyam, 2023, No. 47 of 2023, INDIA CODE (2023).
[141] Statement of Objects and Reasons, The Bharatiya Nyaya Sanhita, 2023, No. 45 of 2023, INDIA CODE (2023).

II. Historical Context: Gender Justice Under the Indian Penal Code

A. Colonial Legacy and Patriarchal Underpinnings

The Indian Penal Code, drafted by Lord Macaulay in 1860, was a product of Victorian morality and colonial administration.[142] Its approach to crimes against women was deeply rooted in patriarchal notions of honor, chastity, and the protection of male proprietary interests rather than women's bodily autonomy and dignity.[143] For instance, the IPC's treatment of rape under Section 375 was framed around the violation of a woman's "modesty" and "honor" rather than as a violation of her fundamental right to bodily integrity and sexual autonomy.[144]

The definition of rape under the IPC was notably restrictive, recognizing only penile-vaginal penetration and excluding other forms of sexual assault.[145] This narrow construction failed to account for the diverse manifestations of sexual violence and left significant gaps in legal protection. Moreover, the IPC contained several provisions that reflected and reinforced gender stereotypes, such as the marital rape exception under Section 375, which deemed sexual intercourse by a man with his own wife not to be rape if she was above fifteen years of age.[146]

B. Judicial Activism and Legislative Amendments

The inadequacies of the IPC prompted significant judicial activism and periodic legislative interventions. The landmark *Mathura rape case* (1979) exposed the insensitivity of the criminal justice system toward rape victims and catalyzed the first major amendment to rape laws in 1983.[147] Subsequently, the brutal gang rape and murder of *Jyoti Singh* in Delhi in December 2012 (commonly referred to as the *Nirbhaya case*) triggered nationwide protests and led to the constitution of the Justice Verma Committee.[148]

The Committee's recommendations resulted in the Criminal Law (Amendment) Act, 2013, which introduced several progressive changes, including the expansion of the definition of rape, criminalization of stalking and voyeurism, and enhanced punishments for sexual

[142] RATANLAL & DHIRAJLAL, THE INDIAN PENAL CODE 1-15 (34th ed. 2014).
[143] Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India* 45-67 (1999).
[144] Indian Penal Code, 1860, § 375, No. 45 of 1860, INDIA CODE (1860).
[145] *Id*
[146] Indian Penal Code, 1860, § 375, Exception 2, No. 45 of 1860, INDIA CODE (1860).
[147] Tukaram v. State of Maharashtra, AIR 1979 SC 185; *see also* Upendra Baxi, *Courage, Craft and Contention: The Indian Supreme Court in the Eighties* 89-112 (1985).
[148] Justice J.S. Verma Committee, *Report of the Committee on Amendments to Criminal Law* (Jan. 23, 2013).

offenses.[149] Despite these amendments, the fundamental structure of the IPC remained rooted in its colonial framework, necessitating a more comprehensive overhaul.

III. The Bharatiya Nyaya Sanhita, 2023: Key Provisions on Gender Justice

A. Redefinition of Sexual Offenses

One of the most significant aspects of the BNS Act is its approach to sexual offenses. Section 63 of the BNS (corresponding to Section 375 of the IPC) retains the expanded definition of rape introduced in 2013 but employs more neutral and victim-centric language.[150] The BNS explicitly recognizes various forms of penetrative sexual assault beyond penile-vaginal intercourse, including oral sex and penetration with objects, thereby acknowledging the diverse nature of sexual violence.[151]

The BNS also maintains the seven circumstances under which consent is vitiated, including situations involving fear, intoxication, mental incapacity, and deception.[152] By centering the concept of consent, the BNS represents a shift from the morality-based framework of the IPC to a rights-based approach that prioritizes bodily autonomy and sexual agency.

However, the BNS continues to retain the marital rape exception, albeit with a modified age threshold.[153] This retention has been widely criticized by women's rights activists and legal scholars as perpetuating the notion that marriage constitutes irrevocable consent to sexual intercourse, thereby denying married women the fundamental right to bodily integrity.[154]

B. Crimes Against Children

The BNS Act incorporates several provisions specifically addressing crimes against children, complementing the Protection of Children from Sexual Offences (POCSO) Act, 2012.[155] Section 64 of the BNS prescribes stringent punishments for sexual offenses against minors, with enhanced penalties for aggravated forms of assault.[156]

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[149] The Criminal Law (Amendment) Act, 2013, No. 13 of 2013, INDIA CODE (2013).
[150] The Bharatiya Nyaya Sanhita, 2023, § 63, No. 45 of 2023, INDIA CODE (2023).
[151] *Id*
[152] *Id*
[153] The Bharatiya Nyaya Sanhita, 2023, § 63, Exception 2, No. 45 of 2023, INDIA CODE (2023)
[154] Mrinal Satish, *Marital Rape and the Constitution: Why the Marital Rape Exception Must Go*, 3 INDIAN J. CONST. L. 122 (2018).
[155] The Protection of Children from Sexual Offences Act, 2012, No. 32 of 2012, INDIA CODE (2012).
[156] The Bharatiya Nyaya Sanhita, 2023, § 64, No. 45 of 2023, INDIA CODE (2023).

The Act also addresses child trafficking and exploitation under Sections 140-143, recognizing the vulnerability of children to various forms of abuse and exploitation.[157] These provisions reflect an acknowledgment of children as rights-holders deserving special protection within the criminal justice framework.

C. Offenses Based on Coercion and Power Imbalance

The BNS Act retains and refines provisions addressing offenses that exploit power imbalances and coercion. Section 74 (corresponding to Section 354A of the IPC) criminalizes sexual harassment, recognizing unwelcome physical contact, sexual advances, demands for sexual favors, and sexually colored remarks as punishable offenses.[158]

Similarly, Sections 75 and 76 address voyeurism and stalking respectively, acknowledging these as distinct forms of gender-based violence that violate women's privacy and autonomy.[159] The inclusion of these offenses represents a recognition that gender-based violence extends beyond physical assault to encompass psychological and emotional harm.

D. Dowry-Related Offenses

The BNS Act continues to criminalize dowry-related offenses under Sections 84-86 (corresponding to Sections 304B, 498A, and related provisions of the IPC).[160] Section 84 addresses dowry death, while Section 85 criminalizes cruelty by a husband or his relatives.[161] These provisions acknowledge the endemic nature of dowry-related violence in Indian society and the need for specific legal mechanisms to address it.

However, concerns have been raised about the potential misuse of these provisions, particularly Section 85 (erstwhile Section 498A IPC), which has been characterized by some as being susceptible to false complaints.[162] The BNS does not introduce significant safeguards to address these concerns, maintaining the status quo from the IPC.

[157] The Bharatiya Nyaya Sanhita, 2023, §§ 140-143, No. 45 of 2023, INDIA CODE (2023).
[158] The Bharatiya Nyaya Sanhita, 2023, § 74, No. 45 of 2023, INDIA CODE (2023).
[159] The Bharatiya Nyaya Sanhita, 2023, §§ 75-76, No. 45 of 2023, INDIA CODE (2023).
[160] The Bharatiya Nyaya Sanhita, 2023, §§ 84-86, No. 45 of 2023, INDIA CODE (2023).
[161] *Id*
[162] Sushil Kumar Sharma v. Union of India, (2005) 6 SCC 281.

IV. Comparative Analysis: BNS vs. IPC

A. Linguistic and Structural Changes

One of the most apparent differences between the BNS and IPC is the use of language. The BNS employs more contemporary and neutral terminology, moving away from colonial-era expressions.[163] For instance, terms like "modesty" and "chastity" are used more sparingly, with greater emphasis on concepts like "dignity," "autonomy," and "consent."

Structurally, the BNS reorganizes provisions to improve coherence and accessibility. Related offenses are grouped together more logically, potentially facilitating better understanding and application by law enforcement and judicial officers.[164]

B. Substantive Legal Changes

While the BNS introduces several refinements, many provisions remain substantively similar to their IPC counterparts. The retention of the marital rape exception, the absence of gender-neutral rape laws, and the continuation of provisions susceptible to misuse indicate that the BNS represents an evolution rather than a revolution in criminal law.[165]

The BNS does introduce some progressive elements, such as enhanced punishments for certain offenses against women and children, and clearer articulation of consent-based frameworks.[166] However, whether these changes translate into substantive improvements in gender justice depends largely on implementation and judicial interpretation.

V. Systemic Barriers to Gender Justice: Beyond Legislative Reform

A. Under-Reporting and Stigmatization

One of the most significant challenges in achieving gender justice is the pervasive under-reporting of crimes against women and children. Studies indicate that a substantial proportion of sexual violence and domestic abuse goes unreported due to stigma, fear of social ostracism, and lack of faith in the criminal justice system.[167]

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[163] Sushil Kumar Sharma v. Union of India, (2005) 6 SCC 281.
[164] *Id*
[165] Ratna Kapur, *Erotic Justice: Law and the New Politics of Postcolonialism* 134-156 (2005).
[166] The Bharatiya Nyaya Sanhita, 2023, No. 45 of 2023, INDIA CODE (2023).
[167] National Family Health Survey (NFHS-5), *India Report* 2019-21, Ministry of Health and Family Welfare (2022).

The National Crime Records Bureau (NCRB) data consistently shows that reported crimes represent only a fraction of actual incidents.[168] Victims often face victim-blaming attitudes from family, community, and even law enforcement officials, which discourages reporting and perpetuates a culture of silence around gender-based violence.[169]

B. Institutional Insensitivity and Capacity Constraints

The effectiveness of any criminal law framework depends on the sensitivity and capacity of institutions responsible for its implementation. Unfortunately, Indian law enforcement agencies and judicial institutions often exhibit significant deficiencies in this regard.[170]

Police officers frequently lack adequate training in handling cases of sexual violence and domestic abuse, leading to insensitive treatment of victims during complaint registration and investigation.[171] The absence of sufficient female police officers, particularly in rural areas, further compounds this problem, as many women victims feel uncomfortable reporting crimes to male officers.[172]

Similarly, the judiciary faces substantial backlogs, with cases often taking years to reach trial and conclusion.[173] This delay not only denies timely justice to victims but also subjects them to prolonged trauma through repeated court appearances and cross-examinations.

C. Socio-Economic Barriers

Gender justice cannot be divorced from broader socio-economic contexts. Women and children from marginalized communities—including Dalits, Adivasis, religious minorities, and economically disadvantaged groups—face compounded vulnerabilities and barriers to accessing justice.[174]

Economic dependence on perpetrators, particularly in cases of domestic violence, often prevents victims from seeking legal recourse.[175] The lack of adequate support systems,

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[168] National Crime Records Bureau, *Crime in India 2022*, Ministry of Home Affairs (2023).
[169] Pratiksha Baxi, *Public Secrets of Law: Rape Trials in India* 78-102 (2014).
[170] Vrinda Grover, *Access to Justice: Challenges Before Women in India*, in WOMEN AND LAW IN INDIA 234-267 (Archana Parashar & Amita Dhanda eds., 2008).
[171] Commonwealth Human Rights Initiative, *Police Accountability: Too Important to Neglect, Too Urgent to Delay* 45-67 (2005).
[172] Bureau of Police Research and Development, *Data on Police Organizations in India 2022* (2023).
[173] Law Commission of India, *Report No. 245: Arrears and Backlog: Creating Additional Judicial (Wo)manpower* (2014).
[174] Kalpana Kannabiran, *Tools of Justice: Non-Discrimination and the Indian Constitution* 156-189 (2012).
[175] Domestic Violence and Women's Economic Dependence, INTERNATIONAL CENTER FOR RESEARCH ON WOMEN (2015).

including shelters, counseling services, and legal aid, further impedes access to justice for vulnerable populations.[176]

VI. The Role of Judicial Interpretation in Advancing Gender Justice

A. Progressive Jurisprudence

Indian courts, particularly the Supreme Court, have played a crucial role in advancing gender justice through progressive interpretation of constitutional and statutory provisions. Landmark judgments such as *Vishaka v. State of Rajasthan* (1997), which established guidelines for preventing sexual harassment at workplaces, and *Independent Thought v. Union of India* (2017), which struck down the exception allowing sexual intercourse with a child bride, demonstrate the judiciary's potential to fill legislative gaps and advance rights-based approaches.[177]

The Supreme Court's recognition of the right to privacy as a fundamental right in *Justice K.S. Puttaswamy v. Union of India* (2017) has significant implications for gender justice, particularly in the context of bodily autonomy and sexual agency.[178] Similarly, the Court's affirmation of women's constitutional right to equality in *Indian Young Lawyers Association v. State of Kerala* (2018) (the *Sabarimala case*) reflects a commitment to dismantling patriarchal structures.[179]

B. Challenges in Judicial Attitudes

Despite progressive judgments, Indian courts have also delivered decisions that reflect regressive attitudes toward gender and sexuality. Instances of judges making insensitive remarks about rape victims, suggesting marriage as a remedy for sexual assault, or granting bail to accused persons based on patriarchal notions have been widely criticized.[180]

The inconsistency in judicial approaches highlights the need for comprehensive gender sensitization training for judicial officers and the development of clear guidelines for handling cases involving gender-based violence.[181]

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[176] *Id*
[177] Vishaka v. State of Rajasthan, AIR 1997 SC 3011; Independent Thought v. Union of India, (2017) 10 SCC 800.
[178] Justice K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1.
[179] Indian Young Lawyers Association v. State of Kerala, (2018) 8 SCC 1.
[180] Gautam Bhatia, *Judges and Gender Justice: Some Uncomfortable Truths*, THE WIRE (Sept. 15, 2022).
[181] *Id*

VII. Implementation Challenges and the Way Forward

A. Need for Comprehensive Training and Capacity Building

For the BNS Act to achieve its stated objectives of advancing gender justice, substantial investment in training and capacity building is essential. Law enforcement officers, prosecutors, and judicial officers must receive regular, mandatory training on gender sensitivity, trauma-informed approaches to victim interaction, and the rights-based framework underlying the new legislation.[182]

The establishment of specialized units for handling crimes against women and children, staffed by trained personnel, can significantly improve the quality of investigation and prosecution.[183] Several states have experimented with such models, including special cells for women and children and fast-track courts for sexual offense cases, with varying degrees of success.[184]

B. Strengthening Support Systems

Legal reform must be accompanied by robust support systems for victims. This includes the establishment of accessible shelters, counseling services, legal aid clinics, and rehabilitation programs.[185] The One Stop Centre (OSC) scheme, launched by the Ministry of Women and Child Development, represents a step in this direction, but its implementation has been uneven across states.[186]

Community-based support systems and partnerships with civil society organizations can play a crucial role in reaching victims in remote and marginalized communities.[187]

C. Addressing Structural Inequalities

Ultimately, achieving gender justice requires addressing the structural inequalities that perpetuate violence against women and children. This includes promoting women's economic

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[182] National Mission for Justice Delivery and Legal Reforms, *Action Plan for Reducing Delays and Arrears in Judicial Administration* (2011).
[183] Ministry of Home Affairs, *Advisory on Strengthening Law Enforcement Response to Crimes Against Women* (2013).
[184] *Id*
[185] Ministry of Women and Child Development, *Scheme for Universalization of Women Helpline* (2015).
[186] Ministry of Women and Child Development, *One Stop Centre Scheme: Implementation Guidelines* (2015).
[187] *Id*

empowerment, ensuring access to education, challenging patriarchal norms through awareness campaigns, and fostering a culture of gender equality.[188]

Legal reform, while necessary, is insufficient in isolation. It must be part of a comprehensive strategy that addresses the root causes of gender-based violence and discrimination.

VIII. Critical Gaps in the BNS Act

A. Retention of the Marital Rape Exception

The most glaring omission in the BNS Act is its retention of the marital rape exception. By continuing to exclude non-consensual sexual intercourse within marriage from the definition of rape, the BNS perpetuates the archaic notion that marriage constitutes permanent consent.[189]

This exception contradicts constitutional principles of equality and dignity and has been criticized by numerous international human rights bodies.[190] Several High Courts have questioned the constitutionality of this exception, and the matter is currently pending before the Supreme Court.[191] The failure of the BNS to address this issue represents a significant setback for gender justice.

B. Absence of Gender-Neutral Provisions

The BNS continues to frame sexual offenses in gender-specific terms, recognizing only male perpetrators and female victims in the definition of rape.[192] This approach excludes male victims of sexual violence and fails to acknowledge the experiences of transgender and non-binary individuals.[193]

While Section 377 of the IPC (criminalizing "unnatural offenses") was partially read down by the Supreme Court in *Navtej Singh Johar v. Union of India* (2018) to decriminalize consensual same-sex relations, the BNS does not adequately address sexual violence within LGBTQ+ communities.[194]

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[188] UN Women, *Progress of the World's Women 2019-2020: Families in a Changing World* (2019).
[189] *Id*
[190] Supra note 17.
[191] Committee on the Elimination of Discrimination Against Women, *Concluding Observations on India*, UN Doc. CEDAW/C/IND/CO/4-5 (July 18, 2014).
[192] Independent Thought v. Union of India, (2017) 10 SCC 800 (questioning the constitutionality of Exception 2 to Section 375 IPC regarding child marriage).
[193] The Bharatiya Nyaya Sanhita, 2023, § 63, No. 45 of 2023, INDIA CODE (2023).
[194] Siddharth Narrain, *Queer Rights as Human Rights*, in HUMAN RIGHTS IN INDIA: THEORY AND PRACTICE 289-312 (Ranabir Samaddar ed., 2016).

C. Inadequate Provisions on Cyber Crimes Against Women

In an increasingly digital age, women and children face new forms of gender-based violence, including cyber stalking, non-consensual sharing of intimate images (revenge porn), online harassment, and digital sexual exploitation.[195] While the BNS includes some provisions addressing cyber crimes, critics argue that these are insufficient to address the rapidly evolving nature of technology-facilitated abuse.[196]

IX. International Perspectives and Best Practices

A. Comparative Legal Frameworks

Several jurisdictions have implemented progressive legal frameworks addressing gender-based violence that offer valuable lessons for India. The United Kingdom's Sexual Offences Act, 2003, for instance, employs a consent-based framework that places the burden on the accused to demonstrate reasonable belief in consent.[197]

Similarly, Sweden's consent-based rape law, enacted in 2018, defines rape as sexual acts without voluntary participation, shifting focus from the use of force or threat to the presence or absence of consent.[198] These frameworks prioritize victim autonomy and challenge traditional notions that place the burden of resistance on victims.

B. International Human Rights Standards

India is a signatory to several international instruments addressing gender-based violence, including the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC).[199] These instruments obligate state parties to take comprehensive measures to prevent, investigate, and punish violence against women and children.[200]

The United Nations Declaration on the Elimination of Violence Against Women (1993) defines violence against women broadly to include physical, sexual, and psychological violence

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[195] Navtej Singh Johar v. Union of India, (2018) 10 SCC 1.
[196] Cyber Crime Against Women and Children, NATIONAL COMMISSION FOR WOMEN (2021).
[197] *Id*
[198] Sexual Offences Act 2003, c. 42 (U.K.).
[199] Swedish Penal Code, ch. 6, § 1 (as amended 2018).
[200] Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13; Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3.

occurring in the family, community, or perpetrated by the state.[201] Aligning domestic legislation with these international standards is essential for advancing gender justice.

X. Conclusion: Toward Substantive Gender Justice

The enactment of the Bharatiya Nyaya Sanhita, 2023, represents a significant moment in India's legal history and an opportunity to reimagine criminal justice through a gender-sensitive, rights-based lens. The Act introduces several positive changes, including refined definitions of sexual offenses, enhanced punishments for crimes against women and children, and a greater emphasis on consent and bodily autonomy.

However, this paper has demonstrated that legislative reform alone is insufficient to achieve substantive gender justice. The BNS retains several problematic provisions, including the marital rape exception, and fails to adequately address emerging forms of gender-based violence in the digital age. Moreover, the Act's effectiveness depends critically on its implementation by law enforcement and judicial institutions, which have historically exhibited significant deficiencies in sensitivity and capacity.

True gender justice requires a holistic approach that combines progressive legislation with robust implementation mechanisms, comprehensive training and capacity building, accessible support systems for victims, and sustained efforts to address the structural inequalities that perpetuate violence against women and children. It demands a criminal justice system that is empathetic, accessible, and responsive to the lived realities of vulnerable populations.

As India embarks on this new chapter in its criminal law framework, the challenge lies in ensuring that the promise of reform translates into lived justice for women and children. This requires sustained engagement from all stakeholders—legislators, judiciary, law enforcement, civil society, and citizens—to build a society where equality, dignity, and justice are not merely constitutional ideals but everyday realities.

The BNS Act provides a foundation, but the edifice of gender justice must be constructed through vigilant implementation, progressive judicial interpretation, and unwavering commitment to the constitutional values of equality, liberty, and dignity for all.

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[201] *Id*

THE CODIFICATION OF SNATCHING: A COMPARATIVE STUDY OF SECTION 304 OF THE BHARATIYA NYAYA SANHITA (BNS) AND THE INDIAN PENAL CODE

Ms. K. Karpagaa, [202]**, *Ms. Monisha G V*** [203]

Introduction

Criminal law serves as an instrument to protect life, liberty, and property by defining offences and prescribing punishments. Property offences occupy a significant place within this framework, as they directly affect public order and individual security. Among such offences, snatching has emerged as a common form of street crime, particularly in urban areas marked by dense population, fast mobility, and increased reliance on personal belongings such as mobile phones, handbags and valuable gold chains.

Under the Indian Penal Code, 1860, snatching was not recognized as a separate offence instead it was fitted within the existing categories of theft or robbery. This approach often resulted in conceptual confusion, inconsistent application of law, and punishments that did not adequately reflect the gravity of the offence. The Bharatiya Nyaya Sanhita, 2023 seeks to address this gap by codifying snatching as an independent offence under Section 304.

This article aims to critically examine the codification of snatching by comparing Section 304 of the BNS with the relevant provisions of the IPC. It seeks to evaluate whether the new provision effectively addresses the limitations of the earlier legal framework and whether it is capable of ensuring uniformity and deterrence in the prosecution of snatching offences.

Methodology and Scope of Study

Methodology

The present study adopts a doctrinal and comparative method of legal research. The doctrinal approach has been employed to analyse statutory provisions relating to theft and snatching under the Indian Penal Code, 1860 and the Bharatiya Nyaya Sanhita, 2023 respectively. The research involves study of legislative texts to identify the essential ingredients of the offence, the scope of criminal liability, and the nature of punishment prescribed.

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A comparative method has been used to examine the treatment of snatching under the IPC framework, where such offences were prosecuted under theft or robbery provisions, and to assess how the BNS departs from this approach by codifying snatching as a distinct offence. Judicial decisions of the Supreme Court and High Courts interpreting Sections 378 and 390 of the IPC have been analysed to highlight the difficulties and inconsistencies that existed prior to the enactment of the BNS.

Secondary sources such as law journal articles, legal commentaries, and legislative materials have been relied upon to support statutory interpretation.

Scope of the Study

The scope of the study is confined to a comparative analysis of snatching-related offences under the Indian Penal Code, 1860 and the Bharatiya Nyaya Sanhita, 2023. The research primarily focuses on Section 304 of the BNS and its relationship with Sections 378, 379, and 390 of the IPC, which were also previously applied to snatching crimes. The study also briefly examines relevant state amendments to the IPC in Punjab and Haryana to the extent necessary to explain the legislative background of Section 304.

The research is limited to substantive criminal law and does not undertake an empirical or statistical analysis of crime data. Procedural and evidentiary aspects are referred to only where required to assess the practical implications of the provision. The study aims to evaluate whether the codification of snatching under the BNS addresses the shortcomings of the IPC and contributes to greater clarity and uniformity in criminal jurisprudence.

Snatching under the Indian Penal Code, 1860

Theft under Section 378 IPC

" Whoever, intending to take dishonestly any movable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft."[204]

Section 378 of the IPC defines theft as the dishonest taking of movable property out of the possession of any person without that person's consent. The provision focuses primarily on the element of dishonest intention and the act of taking movable property. While snatching involves

[204] Indian Penal Code, No. 45 of 1860, Sec 378 (India).

dishonest taking, it also involves sudden physical force and direct clash which are not adequately captured under Section 378.

Courts often treated snatching as theft when the element of violence was minimal or momentary. This approach failed to recognise the intense risk of injury and fear caused to victims, particularly elderly persons and women.

Robbery under Section 390 IPC

Robbery. —In all robbery there is either theft or extortion.

When theft is robbery.—Theft is "robbery" if, in order to the committing of the theft, or in committing the theft, or in carrying away or attempting to carry away property obtained by the theft, the offender, for that end voluntarily causes or attempts to cause to any person death or hurt or wrongful restraint, or fear of instant death or of instant hurt, or of instant wrongful restraint.

When extortion is robbery.—Extortion is "robbery" if the offender, at the time of committing the extortion, is in the presence of the person put in fear, and commits the extortion by putting that person in fear of instant death, of instant hurt, or of instant wrongful restraint to that person or to some other person, and, by so putting in fear, induces the person so put in fear then and there to deliver up the thing extorted.

Explanation. —The offender is said to be present if he is sufficiently near to put the other person in fear of instant death, of instant hurt, or of instant wrongful restraint.[205]

Section 390 IPC defines robbery as theft or extortion accompanied by or involving immediate violence or threat of violence. While certain instances of snatching could fall within the definition of robbery, not all snatching incidents involve the degree of force or threat contemplated under Section 390. This led to judicial hesitation in classifying snatching as robbery, resulting in reliance on theft provisions instead.

Limitations of the IPC Framework

The IPC, 1860 did not have adequate definitions within theft and robbery to deal with offences involving sudden force without sustained violence. This gap resulted in inconsistent charging

[205] Indian Penal Code, No. 45 of 1860, §§390 (India).

practices, uneven punishments, and limited deterrence. The absence of a specific provision also contributed to under-reporting and weak prosecution of snatching cases.

It is evident from certain judicial precedents and that acted as catalyst to amend IPC. In the State of Maharashtra v. Joseph Mingel Koli, (1997) 2 SCC 70 **t**he Supreme Court held that for an act to amount to robbery under Section 390 IPC, there must be *violence or threat of immediate violence* while committing theft. The Court clarified that **mere sudden taking of property without sufficient force or threat would not amount to robbery**. This judgment became significant in snatching cases, as many incidents involved momentary force but did not meet the high threshold required for robbery. As a result, offenders were often convicted only for theft, even when victims suffered physical harm. The case exposed the inadequacy of IPC provisions to deal with offences involving sudden physical force that fell short of robbery.[206]

State-Level Amendments and Legislative Background

In certain states of India such as Punjab- Haryana, Gujarat, Tripura and Delhi, there emerged significant threat due to snatching and common vulnerable people were affected from the snatching offence and due to gap between theft and robbery, inconsistent sentencing and inadequate victim protection thus each state coped up throw various ways and in Gujarat and Tripura state amendment in IPC has done whereas Punjab and Haryana used some special laws but still not efficient and Delhi still relied upon the old provisions of theft and robbery from IPC,1860.

STATE AMENDMENT - GUJARAT

379A. Snatching. —

(1) Whoever, with the intention to commit theft, suddenly or quickly or forcibly seizes or secures or grabs or takes away from any person or from his physical possession any moveable property, and makes or attempt to make escape with such property, is said to commit snatching.

(2) Whoever attempts to commit snatching shall be punished with rigorous imprisonment for a term which shall not be less than five years but which may extend to ten years, and with fine which may extend to twenty-five thousand rupees.

[206] State of Maharashtra v. Joseph Mingel Koli, 1997 SCC OnLine Bom 247 (India).

(3) Whoever commits snatching shall be punished with rigorous imprisonment for a term which shall not be less than seven years but which may extend to ten years, and with fine which may extend to twenty-five thousand rupees.

(4) Whoever, after committing or attempting to commit snatching, causes hurt or wrongful restraint of fear of hurt, in order to affect his escape shall be punished with rigorous imprisonment for a term which may extend to three years, in addition to the punishment provided for the offence of snatching by the preceding sub-sections.

379B.Snatching after preparation made for causing death, hurt or restraint in order to the committing of snatching. —

Whoever commits or attempts to commit snatching, having made preparation for causing death, or hurt, or restraint, or fear of death, or of hurt, or of restraint, to any person, in order to the committing of such snatching, or in order to the retaining of property taken by such snatching, shall be punished with rigorous imprisonment for a term which shall not be less than seven years but which may extend to ten years, and with fine which may extend to twenty-five thousand rupees.[207]

Introduced amendments to the IPC by inserting provisions such as Sections 379A and 379B to deal specifically with snatching. These provisions recognised snatching as a distinct offence and prescribed enhanced punishments. The state-level experience demonstrated the need for a uniform national provision and highlighted the limitations of relying solely on the IPC.

Among Indian states, Gujarat stands out as the only state that expressly amended the Indian Penal Code to recognise snatching as a distinct offence, a fact reflected in IPC bare acts. Punjab and Haryana, despite public perception, did not amend the IPC but addressed snatching through special state criminal statutes and enhanced police laws. Delhi continued to rely on existing IPC provisions such as Sections 356, 379, and 392. Tripura adopted a limited IPC amendment enhancing punishment for theft from the person, though without a precise definition of snatching. These fragmented responses underscored the need for a uniform national provision, ultimately realised through Section 304 of the Bharatiya Nyaya Sanhita, 2023.

[207] Indian Penal Code, 1860, § 379 (as amended by Gujarat Act ___ of ___) (India).

The Bharatiya Nyaya Sanhita draws from these legislative experiments and incorporates snatching as a distinct offence applicable across India. This shift reflects an effort to modernise criminal law in response to evolving crime patterns.

Section 304 of the Bharatiya Nyaya Sanhita, 2023

Definition and Essential Ingredients

Section 304(1) defines snatching as a form of theft where the offender suddenly, quickly, or forcibly seizes, secures, grabs, or takes away movable property from any person or from their possession.[208]

Snatching, as recognised under the Bharatiya Nyaya Sanhita, is essentially an aggravated theft and therefore necessarily incorporates all the constituent elements of theft as stipulated under Section 303 of the BNS. The subject-matter of the offence must be movable property, and such property must be taken directly from the person of the victim or from their immediate possession, thereby distinguishing snatching from ordinary forms of theft committed without personal proximity. The act of taking must be characterised by suddenness and the application of force or violence. Further, the offender must possess the mensrea, namely the intention to commit theft through such abrupt or forcible means.

Section 304 of the BNS defines snatching as the sudden and forceful taking of movable property from a person or from the person's possession. The essential ingredients of the offence include:

1. Taking of movable property;
2. From the person or possession of another;
3. Suddenness of the act; and
4. Use of force.

By incorporating these elements, the provision clearly distinguishes snatching from simple theft and minor property offences.

[208] Bharatiya Nyaya Sanhita, No. 45 of 2023, § 304 (India).

Punishment

Section 304(2) of the BNS prescribes a punishment of either simple or rigorous imprisonment extending up to three years along with liability to fine, both of which are mandatory and not alternative in nature. Procedurally, the offence of snatching is classified as cognizable, non-bailable, and non-compoundable. In practice, snatching is in multiple forms, including chain snatching, mobile phone snatching, bag or purse snatching, vehicle-based snatching, and offences committed in the vicinity of ATMs or banking institutions.

Section 304 prescribes a specific punishment for snatching, reflecting the legislature's intention to treat it as a serious offence. The prescribed punishment aims to enhance deterrence while maintaining proportionality.

Comparative Analysis: IPC and BNS

The codification of snatching under the BNS marks a clear departure from the IPC approach. While the IPC relied on broad and general provisions, the BNS adopts a targeted approach. This enhances legal certainty and reduces discretionary inconsistencies in charging and sentencing.

ASPECT	**THEFT**	**SNATCHING**
MEANING	Dishonestly taking movable property out of possession of another without consent.	Theft committed by suddenly, quickly, or forcibly seizing property from a person.
SECTION	Section 303 BNS / Section 378, 379 IPC	Section 304 BNS
PUNISHMENT	Imprisonment up to 3 years or fine or both.	Imprisonment up to 3 years and fine (both mandatory).
MANNER	Can be secretive, stealthy, or through deception.	Must be sudden, quick, or forcible.
PROXIMITY TO VICTIM	May not involve direct contact with the victim.	Involves direct taking from a person or their immediate possession.

FORCE	Force is not necessarily involved.	Force, suddenness, or quickness is essential.
IMPACT	Primarily property loss.	Property loss with potential physical harm and trauma.
SITUATION	It can occur anywhere.	Typically, it occurs in public places.
PLANNING	May involve elaborate planning.	Often opportunistic and spontaneous.

The comparative analysis reveals that Section 304 fills the legislative vacuum by recognising the distinct nature of snatching and providing a uniform legal response. It also reduces dependence on state-specific amendments, thereby promoting consistency across jurisdictions.

Evidentiary and Implementation Challenges

Despite its advantages, Section 304 presents certain practical challenges. Proving suddenness and force may be difficult in the absence of eyewitnesses. The reliance on victim testimony alone may not always be sufficient to secure conviction.

There will be overlap with Theft and Robbery Provisions although snatching is recognised as a separate offence, its ingredients continue to overlap with theft (absence of force), and robbery (use of force or fear). This overlap may again result in confusion at the stage of charge framing, particularly in borderline cases involving minimal force.

Section 304 prescribes punishment without adequately distinguishing between non-violent snatching causing no injury, and violent snatching resulting in physical harm. Such uniform treatment may violate the principle of proportionality and could lead to excessive punishment in minor cases.

The prosecution bears the burden of proving Suddenness, and Use of force. In the absence of CCTV footage or independent witnesses, conviction may become difficult, especially in crowded public places.

There is a potential risk that minor acts, such as impulsive grabbing without resistance, may be prosecuted as snatching, thereby criminalising conduct that may otherwise fall within simple theft.

The paper emphasises the growing importance of technological evidence such as CCTV footage, mobile recordings, and digital surveillance. Effective implementation of Section 304 will require investment in infrastructure, police training, and standardised investigation protocols.

Judicial Interpretation and Future implication

Judicial interpretation will play a crucial role in shaping the application of Section 304. Courts will need to develop clear standards to distinguish snatching from theft and robbery. Consistent interpretation will be essential to ensure fairness and uniformity.

The provision also reflects a shift towards victim-centric justice by acknowledging the trauma and physical risk involved in snatching offences.

Recommendations and Suggestions

To ensure effective and just implementation of Section 304, the following measures are suggested:

1. Statutory Clarification

The legislature may consider issuing an explanatory note or clarification defining the minimum degree of force and the meaning of "sudden" seizure. This would reduce interpretative ambiguity.

2. Introduction of Graded Punishments

The provision may be refined to distinguish between simple snatching (no injury), and aggravated snatching (causing hurt or involving vulnerable victims). Such gradation would align punishment with culpability.

3. Judicial Guidelines

Higher judiciary may lay down interpretative guidelines to ensure uniform application of Section 304 across jurisdictions.

4. Integration of Digital Evidence

Law enforcement agencies should be encouraged to rely on CCTV footage, Mobile phone tracking and Digital forensic evidence. This would address evidentiary difficulties and improve conviction rates.

5. Training of Police and Prosecutors

Special training programmes should be conducted to ensure correct classification of offences and prevent misuse of the provision.

Conclusion

The codification of snatching under Section 304 of the Bharatiya Nyaya Sanhita represents a significant reform in Indian criminal law. By recognising snatching as a distinct offence, the BNS addresses long-standing gaps in the IPC framework and responds to contemporary crime realities.

However, the success of Section 304 will depend on effective enforcement, judicial clarity, and technological support. The paper suggests continuous training for law enforcement personnel, judicial guidelines for interpretation, and improved surveillance mechanisms to ensure the effective implementation of the provision.

REDEFINING THE SEDITION LAW IN INDIA: NEW CRIMINAL LAW - A STEP TOWARDS IMPROVEMENT OR A TOOL OF IMPOSITION?

Ms. Sampada Shankar Bhat[209]

*"If the freedom of speech is taken away, then dumb and silent we may be led, like sheep to the slaughter."-**George Washington***

Introduction

Sedition law in India has historically functioned as a tool to control. It was added with the intention of stopping freedom fighters from speaking against the British Colonial government. Through section 124A of the Indian Penal Code, 1860, the provision was made such that it criminalised any act that brought hatred, contempt or disaffection towards the government established by law. Post-independence, this law was untouched; it was kept as it is. The intention was to protect the nation from within; anything that would harm the national sovereignty or anything that would compromise national security would be punished through this section. India adopted the constitution and, through various means have tried to limit the scope of this law; however, it has remained prone to misuse by people in positions.

The Bharatiya Nyaya Sanhita, 2023, replaced the Indian Penal Code and introduced different kinds of offences that would amount to sedition. Although the word sedition is not used, the genesis remains the same. ANY offence that threatens the sovereignty, unity and integrity of the nation would fall under this category and will be punished.

This paper examines the transition of sedition law through various lenses in an Indian setting. The legal framework and its implications for the citizens, it analyses the constitutional limitation placed by judicial interpretation and the legislative shift brought by the criminal law. By critically assessing the terminologies, their nature, scope and limitations of the new offences, the paper seeks to determine whether the new criminal have provided the necessary law or is it just a tool to impose the personal beliefs of the authorities on the general public?

Background of the study Historical context

Sedition law was intentionally added to the Indian Penal Code, 1860, by the British in order to protect their colony from within. Freedom fighters like Bal Gangadhara Tilak had already

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started with the mission of making people aware of the gruesome acts of the colonisers. To break free and regain the freedom, once stolen from India. The main purpose of this section was to punish those who were involved in the Nationalist movement and to criminalise speech and expression that led to voicing up against the government. Colonisers were afraid of the raging citizens and feared that someday their regime would be overthrown.

Tilak started "Keshari" – the newspaper, and his Speech during the Shivaji festival led to disaffection towards the British officials, which resulted in the conviction of Tilak for Sedition under Section 124A of the IPC,1860, in the case of *Queen Emperor vs. Bal Gangadhar Tilak (1897)*[210].

In 1922, Mr. Mohandas Karamchand Gandhi was booked under Section 124A for writing a sensitive article in a magazine that was widely circulated, and for that, he was sentenced to six years of imprisonment.

This was an act of suppressing the people and curtailing their liberties for the betterment of the Britishers.

Section 124A of the IPC stood strong for such a long time, even after independence, was majorly because of continuous communal riots, tension amongst the state, and for political interest. The question of whether this section was a boon or a bane had been a topic for debate and caused an imbalance in society. It was a continuous effort from the precedents of the judiciary, which ensured that Freedom of speech and expression was in place.

Judicial Involvement

In Romesh Thappar vs The State of Madras, 1950[211], The Supreme Court held that the decision pronounced by the State of Madras to prohibit the circulation of a socialist publication on the grounds of 'public safety' breached and goes against the right to freedom of speech and expression. Honourable Justice during this hearing emphasised that the Constituent Assembly deliberately removed the term 'sedition' as an exception to Freedom of Expression.

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[210] *Sedition Law in India: A Timeline*, SUPREME COURT OBSERVER, https://www.scobserver.in/journal/sedition-in- india-a-timeline/.
[211] 1950 AIR 124, 1950 SCR 594

Judiciary have played an important role in shaping the laws and how it is interpretated, giving the nation a different perspective to look towards the law. In *Kedarnath Singh vs State of Bihar* (1962), the Supreme Court ruled that sedition charges should be limited to acts that incite hatred or lead to a violation of public law and order, rather than mere criticism of government policies.

Objective of the Study

1. To examine the historical development of sedition laws in India
2. To explore section 152 of BNS and compare it with the previous law, and see its implications for people
3. To analyse sedition in the new criminal law and propose recommendations that could make it better.

Methodologies

This study adopts various approaches like doctrinal legal analysis, case study method and comparative analysis. This ensures that both the evolution and contemporary implications of sedition laws are studied in-depth.

1. **Doctrinal Legal Analysis**: This method involves looking at the existing materials related to sedition law. Various research papers, textbooks, and other legal documents. Through this methodology, the study has a proper direction with sedition law and evolution.
2. **Case Study Approach:** This method structures the precedents set by the judiciary through its interpretation and judgment. These case studies will help in adding justifications to why some words, actions, and gestures do not amount to sedition.
3. **Comparative Analysis Approach:** This approach will be used to compare Sedition under the Indian Penal Code and Bharatiya Nayaya Sanhita, and to analyse the difference between the two and to highlight the key differences and their implication. This will help to find the gap, and will enable to reason out the recommendation.

Section 152 of Bhartiya Nyaya Sanhita, 2023

The old Sedition law was put in the IPC by the British government. Post-independence, people started to realise their rights, and the definition of sedition law was broad and vague and could be misused. Over the years, the judiciary has sought to narrow down the scope of this law;

however, it adds multiple ambiguities. It had to change, so a new criminal law was introduced with the idea of decolonising existing criminal laws, and repealing sedition was what the authorities thought would strengthen the system. Would retain democracy and protect freedom of speech and expression, and additionally maintain the peace in the country; however, the loophole in Section 152 of BNS has become a topic for debate over power dynamics, people, and democracy.

In this section, three terminologies define what leads to endangering the sovereignty, unity and integrity of India:

a. **armed rebellions:** groups bearing armed weapons and force to fight against the government.

b. **subversive activities:** anything done to weaken the country from within, for example, aiding the enemy country and selling crucial information. This threatens and compromises the nation's security

c. **separatist activities:** activities done aggressively with the intent of breaking the unity amongst the people and asking for a separate country. This harms the integrity of the country.

Comparative Analysis of Section 124A, IPC and Section 152, BNS

Section	Definition	Punishment	Implication
124 A of IPC	Anything done to excite or attempt to excite disaffection towards the government	- Imprisonment for life - Imprisonment extended to 3 years - Fine	- Colonial - Broad interpretation - Can be misused
152 of BNS	Any act endangering the sovereignty, unity and integrity of India. ***Armed Rebellion, Subversive Activities, Separatist Activities.***	- Imprisonment for life - Imprisonment extended to 7 years - Fine	- Vague - Not having proper statutory limitation - Can be misused

Apart from increased punishment and vague definition, sedition in both criminal laws is similar. One can say it is rebranded with added strictness, but the ambiguity remains intact.

Rationale through Constitutional Analysis

Although Article 19(1)(a) gives freedom of speech and expression, however; it is not an absolute right. It is subject to reasonable restriction mentioned in Article 19(2) of the Indian Constitution. When it comes to sedition, the Constitution is on a stricter side and limits speech with restrictions so that peace and harmony are maintained throughout. The Supreme Court in Kedarnath Singh's case (1968) has said that things would only lead to sedition if there is incitement of hatred or disruption in society; mere criticism of the government does not fall under the ambit of sedition.

It was in Shreya Singhals's case[212], where the Supreme Court looked into the vagueness of the law – Section 66A of the Information Technology Act, 2000, criminalised messages online which would be offensive or would create hatred. The terms "annoying" and "offensive" were not defined; it was ambiguous in nature. It was a clear violation of Article 19(1)(a)

When we talk about a country and its democracy, it should be noted that criticism and opposition are part of it. The country must maintain its sovereignty and punish those who interfere and disrupt the national security, but at the same time, it should ensure that the Constitution grants freedom to express, without any reason, one should not be subjected to a sanction. There should be a thorough scrutiny.

Recommendation

1. **Amendment**

The current Section 152 needs an amendment that will eliminate the vagueness and provide a clear definition, and establish the offence with proper statutory limitation so that it is not misused for personal gain.

[212] AIR 2015 SC 1523

2. **Constituting a committee**

A committee is to be set up to look into the matter and determine whether it affects the sovereignty and security in any possible way or not. There should be an odd number of members to avoid ties or unnecessary hindrance in the judgment. Members should consist of: one ex officio who has served in the army or defence forces, one law professor, one member each from the ruling party and the opposition, at least one journalist on board and two students from different streams. Any case related to section 152 shall first be sent to this committee, and after scrutinising and following the principle of natural justice, the case can be carried out however it deems fit. This not just reduce the burden on courts but it will also help in safeguarding people's freedom of speech and expression.

3. **Regular reports for transparency**

To maintain transparency, regular reporting has to be done so that no leader misuses this Section for their convenience. These reports can be a bridge between the government and the people and will strengthen the trust of the masses in their government.

Results and Analysis

Do we need the Sedition Law in India?

Yes, we do! In a country like India, with a huge population and different ideologies, opinions that are debated upon, they clash. Differences in religion, community and the interplay of power dynamics make the country vulnerable to riots. This country has witnessed it all.

Instance 1:

The Khalistani Movement, which has been going on for decades in India, is not just a threat to the state government but also affects the country at large. It uses a separatist way of dividing the nation. The territory, people, and everything are at risk.

Instance 2:

Anti-national slogans raised by the students imply and question the integrity of the nation.

Thus, having a sedition law is necessary. The law protects the nation from being hollowed out from within. It punishes those who go beyond the national interests and compromise with

safety. Moreover, a mere criticism should not be considered as sedition; people in power must learn to build tolerance to criticism, as differences of opinion and point of view cannot be the same from every angle of life. Nevertheless, the need for an amendment still prevails, as in the case of Tajendra Pal Singh VS. State of Rajasthan (2024)[213], the person booked was showing support towards a person involved in Khalisthani movement, and it might encourage the masses to demand a separate nation. The Court added that section 152 must be applied only when the action must have been deliberately and maliciously attempted to break the country and incite hatred.

This case demonstrates and highlights the gap that needs to be fixed.

Sedition as a law is needed, but without limitation, it will be just a tool for Imposition.

Conclusion

The intent and implementation, during this transition, a law has to undergo various scrutiny, and that is what makes a law survive in the long run. The Sedition Law under the IPC had played a role in protecting the colony first and then the citizens. The new criminal law is a bit different but quite similar, and this study shows that Section 152 of BNS can become a law that keeps its nation first without compromising the rights of the citizens.

Because **Democracy is "of the people, by the people, for the people"**

[213] S.B. Criminal Misc (Pet.) No. 5005/2024

OUTCOME-ORIENTED CRIMINAL LIABILITY UNDER THE BHARATIYA NYAYA SANHITA: AN ANALYTICAL ASSESSMENT OF PENAL RECONFIGURATION

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Mr. Prabhu T, M.A., [215]

INTRODUCTION

Criminal law in India has historically rested on a fault-based model of liability, where culpability is assessed primarily through the offender's mental state rather than the actual harm caused. The Indian Penal Code, 1860,[216] exemplified this approach by structuring offences and punishments around intention, knowledge, and negligence, often treating materially different outcomes under uniform offence labels. With the enactment of the Bharatiya Nyaya Sanhita, 2023,[217] a perceptible shift has occurred towards an outcome-oriented framework that foregrounds the gravity of harm, victim impact, and societal risk in determining criminal liability and punishment. This transition raises a central research problem: to what extent does the Bharatiya Nyaya Sanhita[218] reconfigure criminal liability from a fault-centric model to a harm-based, outcome-sensitive sentencing paradigm, and what are its doctrinal and constitutional implications? The paper examines whether this recalibration enhances proportionality and deterrence or introduces new risks of inconsistency through expanded prosecutorial and judicial discretion, particularly in the absence of structured sentencing guidelines. The significance of this research lies in its attempt to critically map the penal philosophy underlying the BNS[219] and situate it within India's constitutional commitment to equality, proportionality, and procedural safeguards under Articles 14, 21, and 22.[220] By analysing outcome oriented liability alongside

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[216] Indian Penal Code, 1860, No. 45 of 1860, India.
[217] Bharatiya Nyaya Sanhita, 2023, No. 45 of 2023, India.
[218] Ministry of Home Affairs, Explanatory Notes on the Bharatiya Nyaya Sanhita, 2023 (India).

[219] Statement of Objects and Reasons, Bharatiya Nyaya Sanhita, 2023, Bill No. 121 of 2023 (India).

[220] Constitution of India (1950), arts. 14, 21, 22.

overlapping penal provisions and Section 26[221] of the General Clauses Act,[222] the study contributes to contemporary debates on sentencing reform and offers insight into India's alignment with global trends in harm-based criminal justice.

REVIEW OF LITERATURE

I. Classical Foundations of Criminal Liability and Punishment

The theoretical foundations of criminal liability in Indian criminal law have traditionally been grounded in moral culpability and mens rea rather than outcome-based harm assessment. Conceptualizing criminal punishment as a response to moral blameworthiness, emphasizing intention, recklessness, and negligence over consequences.[223] This framework strongly influenced the drafting and interpretation of the Indian Penal Code, 1860, where liability is structured primarily around the mental element of the offender. Similarly, Glanville Williams, argues that harm alone cannot justify punishment unless accompanied by culpable mental states.[224] Indian courts have historically relied on this approach while interpreting IPC offences, reinforcing a fault-based liability regime. However, scholars like Andrew Ashworth critique excessive focus on culpability, advocating greater integration of harm and societal impact in sentencing, an idea increasingly reflected in modern penal reforms, including the Bharatiya Nyaya Sanhita.[225]

II. Indian Penal Code and the Limits of Fault-Based Sentencing

Indian criminal jurisprudence under the IPC has largely prioritized abstract offence categories over actual harm. K.D. Gaur notes that rigid sentencing ranges under the IPC often fail to distinguish adequately between varying degrees of harm caused by similar

[221] Section 26 – Provision as to offences punishable under two or more enactments
[222] Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence.
[223] General Clauses Act, 1897, No. 10 of 1897, § 26 (India).

[224] H.L.A. Hart, *Punishment and Responsibility: Essays in the Philosophy of Law* 113–157 (Oxford Univ. Press, 2d ed. 2008).

[225] Glanville Williams, Textbook of Criminal Law 27–29 (2d ed. 1983) (emphasising the requirement of mens rea for criminal liability).

conduct[226] The 5th Law Commission of India, 42nd Report[227] acknowledged these limitations, observing that the IPC's sentencing provisions lacked flexibility and failed to respond proportionately to the gravity of consequences suffered by victims. Despite recognizing the need for reform, the IPC structure largely remained unchanged. Further, the 154th Report[228] of 14th Law Commission on the CrPC emphasized that sentencing discretion without structured guidance often results in inconsistency, arbitrariness, and disproportionate outcomes under which an issue now re-emerging under the BNS in the absence of codified sentencing guidelines.

III. Transition Towards Harm-Based and Outcome-Oriented Liability

A growing body of scholarship supports a harm-centric recalibration of criminal liability. Markus Dubber,[229]argues that modern penal systems increasingly measure criminality through social harm and risk , especially for offences involving public safety, bodily integrity, and collective harm. This trend is reflected in comparative criminal law scholarship. Mirjan Damaska, highlights how contemporary codes move away from moralistic abstraction towards instrumental rationality, focusing on deterrence effectiveness and victim-centric justice.[230] Indian scholars like K.N. Chandrasekharan Pillai argue that graded punishments and differentiated negligence standards represent an evolution towards consequentialist accountability, anticipating the structural reforms later realised in the BNS.[231]

IV. Bharatiya Nyaya Sanhita: Legislative Reform and Penal Philosophy

Early academic commentary on the BNS identifies a clear philosophical shift from offence-label rigidity to outcome-sensitive punishment. Observing that multiple BNS provisions recalibrate punishment thresholds based on resulting harm, particularly in offences relating to death by negligence, bodily injury, mob violence, and public safety.[232] The Law

[226] Andrew Ashworth, Sentencing and Criminal Justice 34 (5th ed. 2010) (critiquing an exclusive focus on culpability and discussing the role of harm and societal impact in sentencing)
[227] K.D. Gaur, Criminal Law: Cases and Materials (Oxford Univ. Press, 7th ed. 2013).
[228] Law Comm'n of India, 42d Rep. on the Indian Penal Code (1971).
[229] Law Comm'n of India, 154th Rep. on the Code of Criminal Procedure, 1973 (1996).
[230] Markus D. Dubber, Theories of Crime and Punishment (Oxford Univ. Press 2006).
[231] Mirjan Damaška, Law's Function in Criminal Justice (Yale Univ. Press 1986).
[232] K.N. Chandrasekharan Pillai, General Principles of Criminal Law (LexisNexis Butterworths Wadhwa, 2d ed. 2010).

Commission of India, 262nd Report[233] although predating the BNS strongly advocated proportional sentencing models and victim impact consideration, ideas now embedded structurally in the new Sanhita. Government explanatory notes to the BNS further emphasise that punishment must reflect degree of harm, societal risk, and victim suffering, signalling an institutional commitment to harm-based sentencing.

V. Section 26, General Clauses Act and Overlapping Penal Liability

The interaction between overlapping penal statutes and prosecutorial discretion has long been debated. M.P. Jain, in Indian Constitutional Law, analyses Section 26 of the General Clauses Act,

explaining that while multiple laws may criminalise the same act, double punishment is barred, but prosecutorial choice remains significant.[234] In State of Bihar v. Murad Ali Khan[235], the Supreme Court clarified that Section 26 permits prosecution under either statute but not punishment twice for the same offence. This principle assumes heightened importance under the BNS, where harm-based gradation may allow multiple charging options depending on outcome severity. Scholars caution that without structured sentencing guidance, such prosecutorial discretion could result in unequal application, potentially implicating Article 14 of the Constitution.

VI. Constitutional Perspectives: Proportionality, Equality, and Life

The constitutional underpinnings of sentencing reform are well explored in judicial precedent. In Manoj Narula v. Union of India[236], the Court emphasised that punishment must meet standards of fairness, reasonableness, and proportionality under Article 21. Further, Shatrughan Chauhan v. Union of India[237] underscored that sentencing cannot be mechanically imposed without consideration of individualised harm and human dignity. Scholars like Upendra Baxi argue that victim-centric, harm-based sentencing aligns more closely with constitutional morality, provided safeguards against arbitrariness are maintained.

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[233] Law Comm'n of India, 262d Rep. on the Death Penalty (2015).
[234] M.P. Jain, Indian Constitutional Law (LexisNexis, 8th ed. 2018).
[235] State of Bihar v. Murad Ali Khan, (1988) 4 S.C.C. 655
[236] Manoj Narula v. Union of India, (2014) 9 S.C.C. 1
[237] Shatrughan Chauhan v. Union of India, (2014) 3 S.C.C. 1

VII. Article 22 and Procedural Safeguards in Outcome-Oriented Penal Liability

Scholarly discourse on Article 22 of the Constitution of India situates it as a critical procedural safeguard governing arrest, detention, and preventive detention, forming an essential component of constitutional criminal jurisprudence. Article 22 embodies the constitutional commitment to due process by mandating safeguards such as the right to be informed of grounds of arrest, the right to consult and be defended by a legal practitioner, and production before a magistrate within twenty-four hours. Scholars such as M.P. Jain interpret Article 22 as a procedural counterbalance to expansive state power in criminal justice administration, ensuring that coercive penal mechanisms operate within constitutionally defined limits. Judicial interpretation has reinforced this view, emphasizing that procedural fairness under Article 22 operates in conjunction with substantive protections under Articles 14 and 21. In the context of outcome-oriented criminal liability under the Bharatiya Nyaya Sanhita, academic commentary highlights that enhanced reliance on harm and consequence-based charging may intensify arrest and detention practices, thereby heightening the relevance of Article 22 safeguards. Scholars caution that without strict adherence to Article 22 protections, expanded prosecutorial discretion in harm-based frameworks may risk procedural arbitrariness, undermining constitutional legitimacy.

RESEARCH OBJECTIVES

1. To critically analyse the shift towards outcome-oriented criminal liability under the Bharatiya Nyaya Sanhita by integrating fault-based and harm-based theories of punishment, and to assess whether this recalibration addresses the sentencing deficiencies of the Indian Penal Code while satisfying constitutional principles of proportionality under Articles 14, 21 and 22.
2. To examine the interaction between Section 26 of the General Clauses Act, 1897 and harm-based sentencing under the Bharatiya Nyaya Sanhita, with particular emphasis on prosecutorial discretion, overlapping penal liability, and the necessity for structured sentencing guidelines to prevent arbitrariness in a consequence-driven penal framework.

RESEARCH METHODOLOGY

This study adopts a doctrinal and analytical research methodology. It undertakes a critical examination of statutory provisions of the Bharatiya Nyaya Sanhita, 2023 in comparison with corresponding provisions of the Indian Penal Code, 1860 to identify shifts towards outcome-oriented criminal liability. The research relies on primary sources including statutes, Law Commission Reports, parliamentary materials, and judicial decisions, particularly those interpreting sentencing, proportionality, and overlapping penal liability. Secondary sources such as scholarly writings, commentaries, and comparative criminal law literature are used to contextualise theoretical debates on fault-based and harm-based punishment. The methodology is further supplemented by a normative constitutional analysis grounded in Articles 14, 21, and 22 of the Constitution of India to assess the coherence, fairness, and proportionality of the emerging harm-based sentencing framework.

RESULTS

The findings of the study demonstrate that the Bharatiya Nyaya Sanhita (BNS) reflects a deliberate shift from a fault-centric penal model under the Indian Penal Code to a harm-centric, outcome-oriented framework, particularly in offences that generate collective, systemic, or structural harm. A comparative statutory analysis reveals that several key provisions of the BNS prioritize the magnitude, aggregation, and social diffusion of harm over the isolated culpability of individual actors.

First, Section 113 (Terrorist Act) emerges as a paradigmatic illustration of harm-based liability. The provision calibrates punishment according to consequences such as loss of life, mass injury, destruction of public infrastructure, and the creation of widespread fear, thereby treating terrorism primarily as an offence against society at large. Unlike the IPC's offence-label driven approach to crimes against the State, Section 113 structures liability around both actual and potential harm, signalling a clear outcome-oriented sentencing philosophy.

Similarly, Section 111 (Organised Crime) evidences a harm-centric orientation by criminalising conduct carried out by organised crime syndicates rather than focusing on isolated offences. The provision penalises activities such as kidnapping, extortion, land

grabbing, cyber-crime, and economic offences when committed as part of an organised group, with explicit emphasis on the resulting "general feeling of insecurity amongst citizens." The inclusion of "petty organised crime," such as pick-pocketing and vehicle theft, when committed collectively, underscores the BNS's recognition of aggregated harm, where the cumulative societal impact outweighs the triviality of individual acts.

Further, Section 150 (Acts Endangering Sovereignty, Unity and Integrity of India) reinforces this framework by criminalising conduct that threatens constitutional stability and national cohesion. The analysis indicates that liability under this provision is determined less by the offender's mental element in isolation and more by the scale of institutional and societal harm posed to the nation-State, marking a departure from traditional IPC formulations that relied heavily on intent-based categorisation.

The study also identifies Section 143 (Trafficking of Persons) as a harm-centric offence that conceptualises trafficking as a comprehensive social harm rather than a discrete offence against an individual victim. The provision focuses on "exploitation" including forced labour, sexual exploitation, and beggary, particularly of women and children, and prescribes enhanced punishment based on the severity and continuity of exploitation. The findings suggest that the BNS treats trafficking as a sustained harm to human dignity and social order, thereby justifying high penal thresholds.

Additionally, Section 69 (Sexual Intercourse by Deceitful Means) represents a novel harm-based classification within sexual offences. Unlike traditional IPC provisions that focused primarily on physical acts and lack of consent, Section 69 criminalises sexual intercourse obtained through deception, including false promises of marriage or employment. The results indicate that the BNS identifies fraudulent exploitation and psychological harm as sufficient bases for serious penal liability, even where apparent consent exists, reflecting a broadened understanding of harm beyond physical injury.

Across these provisions, the study identifies common characteristics of harm-centric liability under the BNS. These include the prioritisation of collective and systemic harm, the incorporation of victim impact and societal risk into offence construction, and the adoption of enhanced or mandatory sentencing thresholds for outcomes producing widespread insecurity, exploitation, or constitutional destabilisation. Collectively, these findings substantiate the conclusion that the BNS institutionalises a consequence-driven penal

framework.

However, the analysis also reveals that the expansion of outcome-based offences, when read alongside Section 26 of the General Clauses Act, amplifies prosecutorial discretion in selecting charges based on harm severity. In the absence of formal sentencing guidelines, this discretion may produce uneven application and raise constitutional concerns under Articles 14, 21, and 22, particularly in relation to arrest, detention, and equality before law. Overall, the results confirm that the Bharatiya Nyaya Sanhita marks a decisive transition towards harm-oriented criminal liability, with Sections 111, 113, 150, 143, and 69 serving as core examples of this reorientation.[238]At the same time, the sustainability and constitutional legitimacy of this model remain dependent on the development of structured sentencing principles to ensure consistency, proportionality, and procedural fairness.

DISCUSSION

The comparative analysis between the Indian Penal Code, 1860 and the Bharatiya Nyaya Sanhita, 2023 substantiates the study's central finding that the BNS embodies a decisive shift towards outcome-oriented criminal liability. This transformation becomes evident when specific provisions are examined side by side, revealing how harm and consequence now play a determinative role in structuring liability and punishment. A significant illustration of this shift can be seen in offences relating to death caused by negligence. Under Section 304A of the IPC, causing death by negligence attracted a relatively uniform punishment, irrespective of the scale of harm or degree of risk involved. In contrast, Section 106 of the BNS introduces graded punishment depending on the nature of negligence and the context in which the harm occurs, particularly in cases involving rash or dangerous conduct. This comparative shift directly responds to long-standing scholarly criticism that the IPC failed to proportionately distinguish between varying degrees of negligent harm, thereby reinforcing the study's finding that the BNS addresses sentencing rigidity through consequence-sensitive differentiation. Similarly, the contrast between Section 299–304 IPC (culpable homicide) and their counterparts under the BNS reveals a clearer emphasis on the resulting harm rather than rigid offence categorisation. While the IPC framework relied heavily on finely drawn mental-state distinctions, often leading to doctrinal complexity and inconsistent sentencing, the BNS restructures punishment thresholds to

[238] Bharatiya Nyaya Sanhita, No. 45 of 2023, §§ 69, 111, 113, 143, 150 (India)

correspond more explicitly with outcomes such as loss of life and severity of injury. This supports the interpretation that the BNS prioritises proportionality and deterrence by making the impact of the act central to sentencing decisions. Another notable area of comparison lies in offences involving collective violence. Sections 141–149 IPC, particularly Section 149, imposed constructive liability based on common object, often leading to harsh punishment even where individual harm caused was minimal. The BNS provisions dealing with group and mob-related violence recalibrate punishment based on the extent of actual harm caused especially death or grievous injury thereby embedding outcome-oriented liability within collective offences. This marks a departure from purely attribution-based liability towards a harm-assessment model, aligning with contemporary victim-centric sentencing philosophies identified in the literature. The interaction between these outcome-sensitive provisions and Section 26 of the General Clauses Act, 1897 further complicates the penal landscape. Under the IPC regime, overlapping provisions rarely resulted in significant variation in sentencing outcomes due to rigid punishment ranges. Under the BNS, however, the availability of multiple outcome-based charging options for the same conduct amplifies prosecutorial discretion. From a constitutional perspective, the expansion of outcome-based charging choices under the BNS also implicates Article 22, as enhanced discretion at the stage of arrest and prosecution must remain constrained by procedural safeguards against arbitrary detention and unequal application of penal severity. While Section 26 constitutionally permits prosecution under either statute, the comparative analysis reveals that, in a harm-based framework, such discretion has far greater consequences for sentencing severity, thereby reinforcing concerns regarding equality under Article 14 and procedural fairness under Article 21. In comparison with existing literature, these findings validate scholarly arguments advanced by Ashworth, Dubber, and Indian commentators such as K.N. Chandrasekharan Pillai, who advocate for greater integration of harm and societal risk in criminal punishment. At the same time, the comparative section-based analysis exposes a critical limitation acknowledged by the study: the absence of formal sentencing guidelines under the BNS risks reproducing the very arbitrariness that reform efforts sought to eliminate, albeit in a new doctrinal form. Thus, the comparative study of IPC and BNS provisions demonstrates that while the Bharatiya Nyaya Sanhita substantively advances harm-based and outcome-oriented criminal liability, its success in achieving constitutional proportionality and uniformity ultimately depends on the development of structured sentencing guidance to

discipline discretion within this consequence-driven penal framework.

CONCLUSION

The Bharatiya Nyaya Sanhita marks a significant shift in Indian criminal law from a fault-based model under the IPC to an outcome-oriented, harm-based framework of criminal liability. By grading punishment according to actual harm caused such as death, bodily injury, or societal impact the BNS addresses longstanding deficiencies of the IPC's rigid sentencing structure and advances proportional, victim-centric justice. However, the study finds that this consequence driven approach expands prosecutorial and judicial discretion, particularly when read with Section 26 of the General Clauses Act, creating a risk of inconsistent application. In the absence of formal sentencing guidelines, such discretion may raise concerns under Articles 14, 21, and 22 of the

Constitution, particularly in relation to equality, proportionality, and procedural safeguards against arbitrary deprivation of liberty. Overall, while the BNS aligns Indian sentencing philosophy with modern global reforms, its effectiveness depends on the development of clear, structured sentencing guidelines to ensure fairness, consistency, and constitutional compliance.

"RETENTIONIST PARADOX : CAPITAL PUNISHMENT IN THE BHARATIYA NYAYA SANHITA "

Ms. Srimathi Venkatesan[239]

I. Introduction: Criminal Law Reform and the Retentionist Question

The enactment of the Bharatiya Nyaya Sanhita, 2023 (BNS) marks one of the most significant shifts in India's criminal law since Independence. Replacing the Indian Penal Code, 1860, the BNS has been presented as an effort to "Indianise" criminal law by shedding colonial legacy and aligning penal policy with contemporary social realities. The reform is not merely terminological; it restructures offences, recalibrates punishments, and redefines state responses to crime. Yet among these changes, the continued and expanded presence of capital punishment stands out as the most contested feature of the new regime.

Capital punishment in India has long occupied a morally and constitutionally uneasy position. While the Supreme Court has upheld its constitutionality, it has simultaneously restricted its use to the "rarest of rare" cases where alternative punishment is unquestionably foreclosed.[240] This judicial doctrine attempted to reconcile Article 21 of the Constitution which guarantees that no person shall be deprived of life or personal liberty except according to procedure established by law with legislative retention of the death penalty.[241] The result has been a sentencing framework that oscillates between restraint and retribution.

The BNS reopens this debate in a new context. By introducing capital punishment for additional categories of offences such as mob lynching and organised crime, while retaining it for terrorism and certain sexual offences against minors, the legislature appears to signal a renewed faith in deterrent severity. This raises an important question: does the expansion of death-eligible offences align with constitutional morality and global human rights standards, or does it reflect a persistence of retributive impulses within a reform narrative?

Internationally, the trajectory has moved in the opposite direction. The International Covenant on Civil and Political Rights (ICCPR) restricts the death penalty to the "most serious crimes," widely interpreted as intentional killings.[242]The global trend over the past two decades has favoured abolition or moratorium, grounded in concerns about wrongful convictions, arbitrariness in sentencing, and the irreversibility of execution. India's choice to retain and

[239] Student, The Central Law College, Salem.
[240] Bachan Singh v State of Punjab (1980) 2 SCC 684
[241] Constitution of India 1950, art 21.
[242] International Covenant on Civil and Political Rights 1966, art 6(2).

expand capital punishment therefore places it at a complex intersection between sovereign penal autonomy and international normative evolution.

This examines whether the BNS represents genuine transformation or selective continuity. It argues that while the language of reform emphasises decolonisation and efficiency, the retentionist expansion reveals deeper tensions between deterrence, constitutional guarantees, and the evolving global understanding of human dignity. The inquiry proceeds through historical, structural, constitutional, and comparative analysis.

This study adopts a doctrinal and comparative methodology. It analyses constitutional provisions, the Bharatiya Nyaya Sanhita, 2023, and leading Supreme Court judgments to evaluate the legality and evolution of capital punishment in India. Empirical assessment is drawn from institutional sources such as the Law Commission of India and Project 39A's Death Penalty India Report. Comparative insight is derived from international human rights instruments and authoritative criminological research. The approach combines statutory interpretation, judicial trend analysis, and empirical data to assess whether the expansion of capital punishment under the BNS aligns with constitutional principles and contemporary standards of justice.

II. Historical Evolution of Capital Punishment in India

Capital punishment entered Indian criminal law through the Indian Penal Code, 1860, reflecting nineteenth-century British penal philosophy that viewed death as a legitimate instrument of sovereign authority.

Post-Independence, constitutional challenges questioned whether such punishment was compatible with the right to life. In *Jagmohan Singh v State of Uttar Pradesh*, the Supreme Court upheld the death penalty, holding that judicial discretion and procedural safeguards satisfied constitutional requirements.[243]

Subsequent jurisprudence refined this position. In Bachan Singh v State of Punjab, the Court articulated the "rarest of rare" doctrine, limiting capital punishment to exceptional circumstances where life imprisonment would be inadequate.[244] The decision attempted to humanise sentencing by requiring courts to weigh aggravating and mitigating factors. Later

[243] Jagmohan Singh v State of Uttar Pradesh (1973) 1 SCC 20 .
[244] Bachan Singh v State of Punjab (1980) 2 SCC 684 .

cases such as *Machhi Singh v State of Punjab* elaborated categories guiding this determination.[245]

Over time, judicial emphasis shifted toward procedural fairness and mercy jurisprudence. In *Shatrughan Chauhan v Union of India*, the Court recognised delay in disposal of mercy petitions as a ground for commutation, reinforcing the idea that even condemned prisoners retain constitutional protections.[246] Thus, India's death penalty framework evolved into a tightly circumscribed but constitutionally permitted exception.

III. Capital Punishment under the Bharatiya Nyaya Sanhita, 2023

The Bharatiya Nyaya Sanhita retains capital punishment for offences historically punishable with death, including murder and certain acts of terrorism. More significantly, it introduces death eligibility in contexts such as organised crime and mob lynching resulting in death.[247] This structural reclassification signals legislative recognition of collective violence and transnational criminal networks as grave threats to social order.

The legislative discourse surrounding the BNS framed these changes as necessary responses to contemporary criminal realities and public demand for stronger deterrence. The emphasis appears to be on societal protection and victim justice. Yet the expansion raises doctrinal concerns: whether broadening death-eligible offences dilutes the "rarest of rare" safeguard developed through constitutional interpretation, and whether such inclusion remains consistent with international norms limiting capital punishment to intentional killing of the gravest kind.[248]

The BNS thus preserves the constitutional architecture shaped by judicial precedent while simultaneously enlarging the substantive scope of death-eligible crimes. This dual movement continuity in doctrine but expansion in substance lies at the heart of the retentionist paradox explored here.

IV. Constitutional Scrutiny of the Death Penalty

The constitutional legitimacy of capital punishment in India rests primarily on judicial interpretation rather than explicit textual endorsement. Article 21 permits deprivation of life only through "procedure established by law," yet the Supreme Court has gradually transformed

[245] Machhi Singh v State of Punjab (1983) 3 SCC 470.
[246] Shatrughan Chauhan v Union of India (2014) 3 SCC 1 .
[247] Bharatiya Nyaya Sanhita 2023 (Act 45 of 2023)
[248] UN Human Rights Committee, General Comment No 36 on Article 6 of the ICCPR (2018).

this phrase into a substantive guarantee requiring fairness, non-arbitrariness, and proportionality.[249] The death penalty survives within this framework not as a routine punishment, but as a constitutionally tolerated exception.

In *Maneka Gandhi v Union of India,* the Court expanded Article 21 to require that any procedure affecting life or liberty must be "just, fair and reasonable."[250] This interpretive shift laid the foundation for closer scrutiny of death sentencing. The "rarest of rare" doctrine in Bachan Singh attempted to reconcile legislative authority with constitutional restraint by demanding individualized sentencing and consideration of mitigating circumstances.[251] The Court insisted that life imprisonment is the rule and death the exception.

Yet the practical application of this doctrine has drawn criticism. Sentencing discretion often depends on subjective judicial assessment of what constitutes collective conscience or societal outrage. In *Santosh Kumar Bariyar v State of Maharashtra*, the Court acknowledged inconsistencies in the application of the rarest of rare standard and cautioned against mechanical reliance on precedent.[252] This internal judicial reflection demonstrates that the constitutional framework, while principled, is not immune to arbitrariness.

The BNS expansion of death-eligible offences intensifies this constitutional tension. When additional crimes become punishable by death, the pool of cases entering the "rarest of rare" analysis widens. The constitutional safeguard remains intact in theory, but its practical burden increases. If sentencing inconsistency has been a concern under the IPC regime, broader eligibility may deepen the challenge.

Another dimension of constitutional scrutiny lies in the evolving understanding of human dignity. In *Navtej Singh Johar v Union of India,* the Supreme Court affirmed dignity as a foundational constitutional value.[253] Although not a death penalty case, its reasoning reinforces the principle that state action must respect intrinsic human worth. The irreversible nature of capital punishment sits uneasily beside this dignity-centred interpretation of Article 21. The Court has also recognised that condemned prisoners retain constitutional rights even after sentencing. In Shatrughan Chauhan, procedural lapses and inordinate delay in mercy petitions

[249] Maneka Gandhi v Union of India (1978) 1 SCC 248
[250] ibid.

[251] Bachan Singh v State of Punjab (1980) 2 SCC 684 .
[252] Santosh Kumar Bariyar v State of Maharashtra (2009) 6 SCC 498 .
[253] Navtej Singh Johar v Union of India (2018) 10 SCC 1.

were held to violate Article 21, warranting commutation.[254]This line of reasoning reflects a constitutional commitment that does not cease at conviction.

The constitutional question raised by the BNS is therefore not merely whether the death penalty is valid that issue has been settled but whether its expansion remains consistent with proportionality, dignity, and non-arbitrariness. Constitutional morality demands that penal policy evolve alongside contemporary standards of justice. The challenge lies in ensuring that legislative reform does not dilute judicial safeguards painstakingly developed over decades.

V. Comparative Jurisprudence: Global Abolition and Retention Trends

India's retention of capital punishment must be viewed against a shifting global landscape. Over the past three decades, a clear majority of countries have abolished the death penalty in law or practice.[255] The Second Optional Protocol to the ICCPR explicitly commits signatories to abolition, reflecting an emerging international consensus that the right to life should not be subject to irreversible state action.[256] India is not a party to this protocol, yet it remains bound by the broader human rights framework of the ICCPR.

Article 6 of the ICCPR permits the death penalty only for the "most serious crimes." The UN Human Rights Committee has interpreted this phrase narrowly, limiting it to crimes involving intentional killing.[257] This interpretation has influenced constitutional courts in several jurisdictions. The Constitutional Court of South Africa, in S v Makwanyane, abolished capital punishment, holding that it violated the rights to life and dignity under the post-apartheid Constitution.[258]The judgment recognised that even democratic majorities cannot override fundamental human rights.

In Europe, abolition has become a precondition for membership in the Council of Europe, embedding the norm within regional human rights architecture.[259] African nations such as Ghana and Zimbabwe have recently moved toward legislative abolition, signalling a broader shift beyond Western jurisdictions. The rationale often rests on three pillars: risk of wrongful

[254] Shatrughan Chauhan v Union of India (2014) 3 SCC 1
[255] Amnesty International, Death Sentences and Executions 2023 (Annual Report).
[256] Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty 1989.

[257] UN Human Rights Committee, General Comment No 36 (n 9).

[258] S v Makwanyane 1995 (3) SA 391 (CC) (Constitutional Court of South Africa).
[259] Protocol No 13 to the European Convention on Human Rights (2002).

conviction, discriminatory sentencing patterns, and lack of conclusive evidence that the death penalty deters crime more effectively than life imprisonment.

At the same time, a smaller group of retentionist states continues to carry out executions. The global "concentration effect" indicates that while fewer countries execute, those that do account for a high number of annual executions.[260] India occupies a distinct position within this landscape. Executions are rare, yet death sentences are periodically imposed. The system operates in a space between formal retention and cautious implementation.

Comparative analysis does not compel uniformity, but it provides perspective. Nations that have abolished the death penalty often cite the impossibility of correcting judicial error once execution occurs. DNA exonerations in the United States have revealed wrongful convictions in capital cases, reinforcing concerns about fallibility in criminal justice systems.[261] For India, where investigative and forensic capacities vary across regions, this concern acquires particular relevance.

The BNS expansion must therefore be assessed in light of these global developments. While sovereignty permits divergence from international trends, constitutional courts increasingly engage with comparative reasoning. The Indian Supreme Court itself has drawn upon foreign jurisprudence in rights adjudication. The question is whether the future trajectory of Indian penal reform will move closer to or further from the global movement toward abolition.

VI. Method of Execution and the Debate on Humane Punishment

The debate surrounding capital punishment extends beyond its legitimacy to the manner in which it is carried out. India continues to employ hanging as the prescribed method of execution. The Supreme Court in *Deena v Union of India* upheld hanging as constitutionally valid, holding that it did not violate Article 21 if performed according to procedure.[262] At the time, the Court relied on medical opinion suggesting that the method caused minimal pain when properly administered.

However, evolving standards of decency and advancements in medical science have prompted renewed examination. In recent years, petitions have questioned whether alternative methods such as lethal injection should replace hanging. Although the Court has not mandated

[260] Amnesty International, Death Sentences and Executions 2023 (Annual Report).

[261] National Registry of Exonerations (United States), Annual Report (latest edition,2024).

[262] Deena v Union of India (1983) 4 SCC 645 .

change, judicial observations indicate willingness to review the issue if compelling scientific evidence emerges.

Globally, lethal injection was once introduced as a supposedly humane alternative, yet it has generated controversy due to botched executions and secrecy surrounding drug protocols. Several US states have faced litigation over the risk of severe pain during administration.[263] The debate reveals a deeper philosophical tension: can any form of execution truly be reconciled with the principle of dignity?

The Indian constitutional framework does not expressly mandate the least painful method; it requires that punishment not be cruel, inhuman, or degrading. The question therefore becomes one of proportionality and evolving standards. If penal reform seeks to reflect contemporary values, then the method of execution cannot remain insulated from scrutiny.

The method debate also underscores a symbolic dimension. Retaining hanging historically associated with colonial administration appears paradoxical in a legal regime that emphasises decolonisation. A reform that replaces statutory language but preserves inherited execution practices invites reflection on what substantive transformation entails.

Ultimately, the discussion about method does not resolve the larger normative issue. Even the least painful execution extinguishes life irreversibly. The inquiry into humane methods thus circles back to the broader constitutional and moral debate: whether state-imposed death can coexist with a rights-based constitutional order.

VII. Empirical and Criminological Evaluation

A. Appellate Reversal of Death Sentences in India

A critical indicator of systemic reliability in capital punishment is the rate at which higher courts overturn death sentences imposed by trial courts.According to the Death Penalty India Report (2016), between 2000 and 2015, trial courts imposed 1,790 death sentences. Of the cases subsequently decided by High Courts, approximately 76% were either acquitted or commuted.[264] This demonstrates that fewer than one in four death sentences survived appellate scrutiny at the first appellate level.

The pattern continues at the Supreme Court stage. Of the cases confirmed by High Courts and appealed further, nearly 60% resulted in commutation or acquittal.[265]Such data indicates

[263] Baze v Rees, 553 US 35 (2008) (Supreme Court of the United States).
[264] Mukesh v State (NCT of Delhi) (2017) 6 SCC 1.
[265] Law Commission of India, Report No 262: The Death Penalty (2015).

that a significant proportion of capital sentences are found legally unsustainable upon detailed judicial review.

Judicial acknowledgment of inconsistency reinforces this empirical reality. In *Santosh Kumar Bariyar v State of Maharashtra*, the Supreme Court admitted uneven application of the rarest of rare doctrine[266]. Similarly, in *Sangeet v State of Haryana*, the Court observed that sentencing analysis had drifted toward judge-centric balancing rather than principled uniformity.[267]These figures suggest both the indispensability of appellate safeguards and the structural fragility of capital sentencing at the trial level.

B. Socio-Economic Profile of Death Row Prisoners

Empirical data reveals patterns of vulnerability among those sentenced to death. Project 39A reports that over 74% of death row prisoners came from economically disadvantaged backgrounds, and a majority had limited educational attainment.[268]Many prisoners reported inadequate legal representation during trial proceedings.

This socio-economic clustering raises constitutional concerns under Article 14. If the death penalty disproportionately affects the poor and marginalised, its administration risks reflecting structural inequality rather than purely individualized culpability.

C. Deterrence and Crime Trends

The deterrence rationale remains central to legislative defence of capital punishment. However, the Law Commission of India (262nd Report) concluded that there is no conclusive evidence that the death penalty deters crime more effectively than life imprisonment.[269]

Comparative criminological research, including studies by the US National Research Council, similarly finds no reliable statistical proof of marginal deterrence attributable specifically to execution.[270] Severity alone does not ensure prevention; certainty of conviction often plays a more decisive role.Thus, expanding death-eligible offences under the BNS cannot be justified solely on claims of deterrent superiority.

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[266] Bachan Singh v State of Punjab (1980) 2 SCC 684 .
[267] Navtej Singh Johar v Union of India (2018) 10 SCC 1 .

[268] Shatrughan Chauhan v Union of India (2014) 3 SCC 1 .
[269] Project 39A, National Law University Delhi, Death Penalty India Report (2016).

[270] ibid.

D. Risk of Wrongful Conviction

Although India lacks a consolidated national exoneration registry, appellate acquittals in capital cases demonstrate that wrongful conviction is not theoretical. The high reversal rates at High Court and Supreme Court levels indicate that errors in appreciation of evidence and sentencing occur with concerning frequency.

Given the irreversible nature of execution, even a limited margin of error assumes constitutional significance. The criminal justice system, like any human institution, is not infallible. Capital punishment magnifies the cost of that fallibility.

VIII. Policy Concerns and Reform Imperatives

In light of empirical realities, policy reform becomes essential.

First, clearer statutory guidance on aggravating and mitigating factors could reduce sentencing inconsistency. The balancing framework under Machhi Singh v State of Punjab remains judicially developed rather than legislatively codified.[271]Structured sentencing standards may enhance fairness without eliminating discretion.

Second, strengthening trial-level legal aid is critical. Effective representation at the initial stage significantly influences sentencing outcomes. Specialised training for defence counsel in capital cases would reduce avoidable errors.

Third, India may consider narrowing death eligibility to intentional homicide, aligning more closely with the "most serious crimes" interpretation under international law.[272] Such alignment would preserve legislative sovereignty while harmonising domestic law with global human rights interpretation.

Fourth, greater transparency in mercy petition procedures would strengthen Article 21 protections. In *Shatrughan Chauhan v Union of India*, the Supreme Court recognised that undue delay violates constitutional guarantees.[273]Clear procedural timelines would reinforce accountability.

Penal reform requires balancing victims' rights with constitutional fairness. Expansion without systemic strengthening risks symbolic severity rather than substantive justice.

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[271] Santosh Kumar Bariyar v State of Maharashtra (2009) 6 SCC 498 .
[272] Sangeet v State of Haryana (2013) 2 SCC 452.
[273] Project 39A, National Law University Delhi, Death Penalty India Report (2016).

IX.The Retentionist Paradox: Reforming Justice or Reinforcing Retribution?

The BNS seeks to project a renewed criminal justice framework grounded in contemporary realities. Yet in expanding capital punishment, it deepens a longstanding tension between reform and retribution.

The constitutional structure shaped by Bachan Singh continues to operate. Judicial safeguards remain intact. Executions are rare. However, the widening of death-eligible offences reflects legislative reliance on severity as a response to grave crime. Comparative global trends show increasing discomfort with irreversible punishment. Empirical evidence questions deterrent value and highlights socio-economic disparities. The constitutional commitment to dignity under Article 21 has grown stronger over time.

The retentionist paradox therefore lies in pursuing transformation while reaffirming the ultimate penal sanction. The tension is not about sovereignty, but about alignment with constitutional morality and principled restraint.

X.Victim Justice and the Limits of Retributive Closure

The expansion of capital punishment under the BNS is frequently defended on grounds of victim justice. In cases involving terrorism, sexual violence, or mob lynching, public discourse often frames execution as necessary to restore societal balance and honour the suffering of victims. Courts have occasionally echoed this sentiment, referring to the need to respond to the "collective conscience of society."[274]

The recognition of victims' rights is a legitimate and overdue development in criminal justice. Procedural participation, compensation, and dignity for victims were historically underemphasised within adversarial systems. However, equating victim justice exclusively with capital punishment risks narrowing the meaning of justice itself. Justice must operate within constitutional boundaries, even in cases that evoke strong emotional response.

Empirical research suggests that victims' families hold diverse views on capital punishment. Some seek closure through execution, while others prioritise acknowledgment, truth, and systemic reform.[275]Closure cannot be legislatively guaranteed through severity alone. Moreover, framing execution as a moral necessity may inadvertently shift attention away from

[274]Law Commission of India, Report No 262: The Death Penalty (2015).

[275] National Research Council (US), Deterrence and the Death Penalty (National Academies Press 2012).

systemic improvements such as faster trials, witness protection, and victim support mechanisms.

The Supreme Court has repeatedly emphasised that sentencing must balance aggravating and mitigating factors, not merely public outrage.[276] The constitutional commitment to fairness demands that punishment remain proportionate and individualized, even in the most disturbing cases.

Victim justice therefore cannot be reduced to retribution. A mature criminal justice system must honour victims while safeguarding constitutional morality. Expanding capital punishment as a symbolic response may satisfy immediate public demand but does not necessarily advance long-term justice or systemic reform.

XI. Constitutional Morality and the Future Trajectory of Capital Punishment

The concept of constitutional morality has gained prominence in recent Supreme Court jurisprudence. It requires that state action conform not merely to majoritarian will but to foundational constitutional values such as dignity, equality, and reasoned restraint.[277] Within this framework, the death penalty occupies a precarious position.

India's constitutional courts have historically adopted an incremental approach rather than abrupt abolition. The rarest of rare doctrine, procedural safeguards in mercy petitions, and heightened scrutiny in capital appeals reflect a gradual narrowing of the death penalty's operational space.[278] Even without formal abolition, judicial practice has limited executions to exceptional circumstances.

The future trajectory may depend on three factors. First, continued empirical scrutiny of sentencing patterns and reversal rates will shape judicial comfort with expansion. Second, comparative constitutional dialogue may influence interpretative approaches, as Indian courts frequently engage with global human rights reasoning. Third, legislative willingness to reassess capital punishment in light of evolving standards could determine whether retention remains static or transitional.

The constitutional question is ultimately forward-looking. Does the expansion under the BNS represent consolidation of a permanent retentionist stance, or is it a phase within a longer

[276] Machhi Singh v State of Punjab (1983) 3 SCC 470.
[277] ICCPR 1966, art 6; UN Human Rights Committee, General Comment No 36 (2018).

[278] Shatrughan Chauhan v Union of India (2014) 3 SCC 1 .

trajectory toward restriction? Constitutional morality does not compel immediate uniformity with global abolition trends, but it requires openness to evolving standards of decency and rational evaluation.

The endurance of Article 21 jurisprudence suggests that the debate is far from settled. Capital punishment in India remains legally valid, yet constitutionally contested. Its future will be shaped by the continued interaction between legislative policy, judicial review, and empirical insight.

XII.Conclusion

The expansion of capital punishment under the Bharatiya Nyaya Sanhita must be assessed not only through statutory authority but through constitutional integrity and empirical reality.Data reveals high appellate reversal rates, socio-economic vulnerability among death row prisoners, and absence of proven deterrent superiority. Judicial precedent continues to confine capital punishment within strict limits, yet broader eligibility increases the strain on those safeguards.

Criminal law reform that aspires to legitimacy must rest on fairness, proportionality, and reliability. The irreversible nature of execution demands exceptional caution. Whether India ultimately narrows or retains its current framework, the constitutional dialogue must remain grounded in dignity, equality, and evidence.The future of capital punishment in India will depend less on legislative expansion and more on sustained constitutional scrutiny guided by reason rather than reaction.

BHARATIYA NYAYA SANHITA: BRIDGING GAPS IN GENDER CRIMES THROUGH DETERRENCE AND PROCEDURAL REFORMS

Ms. Nandini K, Ms. Varshini KS [279]

INTRODUCTION:

India's criminal justice system has faced a long struggle with rising gender-based violence, which is proved by the data provided by the National Crime Records Bureau data[280]. The BNS seeks to bridge these gaps by prioritizing victim-centric justice, enforcing harsh penalties, and implementing procedural reforms in collaboration with the companion, Bharatiya Nagarik Suraksha Sanhita (BNSS). Notable cases such as Nirbhaya (2012)[281], Kathua (2018)[282] highlighted the IPC's flaws, such as its vague definition of crimes like rape that do not fall under the marital exceptions, its uneven penalties for aggravated forms, and its absence of provisions for vitiation of consent based on deceit. Procedural violations under the Code of Criminal Procedure (CrPC), 1973, including the failure to disclose the victim's identity, the delay in filing a formal complaint, and the absence of deadlines for medical examinations, exacerbated underreporting and secondary victimization. This paper focuses on the provisions related to the gender crimes and aims to promote the deterrence theory to decrease these kinds of crimes.

METHODOLOGY:

This paper employs a doctrinal and empirical methodology to evaluate BNS reforms. Primary sources include the BNS, BNSS, NCRB 2025 reports (showing 4.48 lakh gender crime cases with 32% conviction rates), and various Supreme Court/High Court judgments post-July 2024. Secondary data draws from deterrence models (Becker 1968, extended herein) and global comparatives (Sweden/Canada). NCRB selection criteria: 2022-2025 trends in rape/gang rape FIRs, charge sheets (e.g., Bihar 75.5%), and pendency. Policy proposals for implementation, tied to Article 14 equality benchmarks.

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[279] Students, III BALLB, KMC College of Law, Tirupur.
[280] NCRB data showing over 445,000 cases in 2022 alone, a 4% increase from prior years. National Crimes Records Bureau, Crime in India 2025 (2026). NCRB data.pdf
[281] Mukesh & Anr. v. State (NCT of Delhi), (2017) 6 SCC 1.
[282] State of Jammu & Kashmir v. Shubam Sangra, 2022 SCC OnLine SC 1592.

GAPS IN IPC GENDER PROVISIONS

The Indian penal code, 1860 contains notable gaps in gender provisions for offences which are against women and children, primarily through gender specific language, marital exceptions and vulnerability to issue. These shortcomings are often undermined equality under the article 14 and protection for victims and it prompts the judicial interventions and eventual reforms like BNS.

The key gaps in IPC gender provisions were predominantly women centric excluding male or transgender victims and it creates enforcement biases.

- Gender- specific definitions excluding male victims: Rape section 375 has limited to penetration by men against women or girls, and ignoring male victims. In the case Priya Patel v. State of Maharashtra[283] (2006) ruled that women can't commit rape due to biological definition, calling it as "black judgment" for discrimination and setting a poor precedent. Sections like 345,509 and 534C of IPC are applied only to women and leaving men unprotected despite surveys showing male harassment victims.
- Marital rape exception: The exception 2 to section 375 has immunized husbands from rape chargers for wives over 15, ignoring consent. RIT Foundation v. Union of India[284] is a landmark case challenging the constitutionality of the marital rape exception under Section 375 of the Indian Penal Code.
- Section 498A led to false cases: In the case Arnesh Kumar v. State of Bihar [285](2014) has highlighted the automatic arrests causing harassment and issuing guidelines for magistrate scrutiny before arrest. Reinforced in Rajesh Sharma v. State of UP[286] (2017, SC, partly stayed).
- Age or consent inconsistencies a low deterrence: There were no standalone offence for deceitful sex, vague consent led to low convictions.

KEY DETERRENCE REFORMS IN BNS:

The Bharatiya Nyaya Sanhita, 2023 has introduced targeted deterrence reforms in the Chapter 5 section 63 to 97 for the offences against women and children, while addressing IPC

[283] Priya Patel v. State of Madhya Pradesh, (2006) 6 SCC 263.
[284] RIT Foundation v. Union of India, 2022 SCC OnLine Del 1404.
[285] Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273.
[286] Rajesh Sharma v. State of U.P., (2018) 10 SCC 472

gaps through escalated penalties, new offences, structural prioritizations and victim centric measures to enhance the certainty, severity and swift justice.

BNS consolidates all such offences into a dedicated early chapter. Signalling priority and with a clear definition like child and informed consent to reduce ambiguity and evidentiary failures. The gender-neutral perpetrator language in assault provisions section 73 to 78, allowing penalties for any gender while retaining women/child focus. There is a compulsory fine for victim rehabilitation and reporting duties which strengthen post-conviction deterrence.

Reforms escalate minimum sentences and it introduced death penalties for aggravated cases with aims to deter via fear of irreversible consequences.

- Rape and sexual assault: section 64 mandates 20-year life for raping of minors with strict minima than IPC section 376.
- Death penalty was expanded offences involving victims who are under 18-year (Sec. 70(2)), broadening IPC's
- Lifetime imprisonment for public servants / relatives (section 67, 68) filing IPC voids

PROCEDURAL REFORMS VIA BNSS:

The Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, replaced the colonial legislation, the Code of Criminal Procedure (CrPC), 1973. Numerous improvements were made to BNSS, including the use of technology, modifications to the way investigations are conducted, and a quicker justice system. In addition to addressing problems like case backlogs and those detained without trial, these significant improvements to the Indian criminal justice system that took effect on July 1, 2024.

Key Procedural Innovations

'The Justice Delayed is Justice Denied'. So in order to curb these delays BNSS mandates some specific timelines for the investigations, trials, and judgments. For instance, investigations for serious offences that is punishable by 7+ years – require a mandatory forensic evidence and also record the process via audio-video on mobile devices., with report forwarded promptly. Medical examinations for rape victims must be carried out within 7 days, and judgments will be followed within 30-60 days' post-arguments.

- Electronic modes apply to trials, inquiries, summons, FIRs (including e-FIRs and Zero FIRs), and document supply to accused/victims within 14 days.
- Police custody up to 15 days that can be authorized in parts within the first 40 days (for 60- day detention cases) or 60 days (for 90-day cases) of detention.

Investigation and Arrest Reforms:

Arrest procedures are drafted to balance the state's power with the protection of individual liberties. It emphasizes the rights of the accused and the mandatory oversight to prevent the future abuse. The Supreme Court[287] pointed out that under Section 35(3) of BNSS reiterates the object of the enactment that an arrest by a police officer is not mandatory in all cases and issuance of notices are mandatory for offences up to 7 years' imprisonment. Searches, seizures, and witness statements must use audio-video recording and it should be forwarded to magistrates within 48 hours.

Reform Area	**BNSS Change**	**CrPC Equivalent**
FIR Registration	Filing of E-FIR via electronic means was specifically permitted; Zero-FIR was also legalised explicitly; preliminary enquiry for 3-7 year offences.	Limited to jurisdiction
Forensic Examination	It is made mandatory for offences with a punishment of 7+ year offences; expert visits scene	It is at the discretion of the investigating officer.
Property Attachment	Extends to immovable proceeds of crime; Requires only a 14-day show-cause notice	Limited to the property absconders.
Samples Collection	Finger impressions, voice samples in addition to signature/ handwriting.	Signatures/handwriting only

[287] In Satender Kumar Antil v. CBI, 2022 SCC OnLine SC 825, The Supreme Court held that arrest is not mandatory and emphasized that notice under section 35(3) of BNSS to an accused or any individuals concerned, qua offences that are punishable with imprisonment up to 7 years, is the rule.

Trial and Bail Enhancements

Trials in absentia are allowed for proclaimed offenders evading arrest. Applications for plea bargaining, which include providing the accused and victims with free copies of the documents, must be filed within 30 days of the charge being framed.

The definition of Bail was expanded under BNSS, and new terms like 'Bail bond' were included. The mandatory bail after serving half-term excludes life imprisonment cases or multiple pending charges, potentially prolonging under-trial detention. The BPRD[288] shows many key comparisons between the BNSS and the CrPC.

DETERRENCE THEORY:

In a country where the gender-based offences are increasing continuously, the severity of those punishments, corresponding to the offences should also be increased. The Deterrence theory states that the criminal behaviour can be prevented by imposing punishments. It aims to influence the rational decision-making by forcing the potential offenders or adversaries to conclude that the risks and costs of their action outweigh any potential gains. This theory was rooted by the Enlightenment thinkers of 18th Century like Jeremy Bentham and Cesare Beccaria. This theory relies on three critical components: Severity (proportional punishment), Certainty (high likelihood of punishment), and Celerity (swiftness of punishment).

BNS Gender-Specific Provisions

The Chapter V of BNS deals with the offences against women and children, which escalates the deterrence beyond the IPC. The section 64 of BNS mandates a minimum rigorous imprisonment of 10 years, which may extend to life imprisonment, along with fine while section 69 introduces up to 10 years of imprisonment for deceitful sexual intercourse – filling the marital consent gaps. This shows the general deterrence to society and specific to perpetrators, echoing Dhananjoy Chatterjee (1994)[289] on exemplary punishment.

[288] The Bureau of Police Research & Development, BNSS-CrPC Comparison (2024). *available at* https://share.google/wGsE50dkeXSytdBfJ.

[289] Dhananjoy Chatterjee was the first individual who underwent death penalty in India for rape and murder. Dhananjoy Chatterjee v. State of W.B., 1994 Supp (1) SCC 646.

BNS Section	Gender Crime	Penalty	Deterrent Effect
64	Aggravated rape	10-years-life imprisonment	Severity + certainty (Chapter V).
69	Deceitful sex	10-years-life imprisonment	General (promise-to-marry cases).
70	Gang rape	Life imprisonment/ death penalty	Celerity (swift BNSS trials).

GARY BECKER'S MODEL OF DETERRENCE:

Gary Becker's economic model of deterrence, from his 1968 paper "Crime and Punishment: An Economic Approach," treats offenders as rational actors who commit crimes when expected utility (benefits minus costs) exceeds legal alternatives.

Becker's model states that 20-30% crime drops if detection exceeds 30%; BNS/BNSS timelines (e.g., 7-day victim exams, forensics) amplify this for gender offences. Supreme Court via BNSS Section 35(3) reinforces by curbing arrests, focusing resources on high-conviction probes.

$$EU\ (crime) = (1-p)\ B - p \times F > U\ (legal)$$

He states that a person commits a crime if the profit he incurred by the commission of such an offence exceeds the utility or profit incurred in doing a legally valid work. It is based on the presumption that the criminals are rational and they seek to maximise the utility or profit. The criminals would not choose to commit the crime if the profit incurred from the commission is exceeded by the cost of committing such a crime, i.e., an increase in the penalty or imprisonment.

EXTENDED: GARY BECKER'S MODEL:

Becker's theory of deterrence works well with crimes that can have a penalty as a deterrent. But it does not comply with the serious offences like rape. Because the gender- based offences are committed by the criminals not only for the economic profit rather it includes other

factors like psychological, social, and physical factors. So these factors must be included in the model so it complies with the serious offences also.

$$EU\ (crime) = (1-p)\ [B_m + B_p + \Psi] - p\ [F_m + F_p + \Delta] + \epsilon > U(legal)$$

where,

EU – Expected Utility

p – Probability of detection

B_m – Monetary Benefits

B_p –Physical Benefits

Ψ - Psychological benefits (e.g., thrill, status, emotional satisfaction).

F_m – Monetary Loss (Fine)

F_p - physical punishments (Imprisonment)

Δ - Psychological losses

ϵ - Irrationality error term (random psychological/physical impulse, capturing bounded rationality or behavioural biases).

U(legal): Utility from legal alternatives.

Crime occurs, if $EU(crime) > U(legal)$

APPLICATION OF THE MODEL:

Hypothetical scenario 1:

Consider 'A', a 28-year-old labourer in a low-enforcement urban slum, driven by resentment and impulse to target a lone woman walking home late. He perceives p=0.15 (15% detection chance due to poor lighting/CCTV), B_m=0 (no cash gain), B_p=5 (physical gratification), Ψ=8 (psychological thrill/power from dominance, fuelled by misogynistic media), F_m=2 (fine equivalent), F_p= 7 (prison harm), Δ=3 (shame/family ostracism), and ϵ=+4 (irrational rage bias overriding caution). Legal utility U(legal)=3 (daily wage satisfaction).

$EU\ (crime) = (1-0.15)\ [0+5+8] - 0.15\ [2+7+3] + 4$

=0.85×13−0.15×12+4

=11.05− 1.8 +4

= 13.25 > 3

Commission of crime takes place.

Hypothetical scenario 2:

Consider ‘A’, a 32-year-old frustrated office worker in the same urban slum, harbouring similar resentment toward a perceived rival colleague walking alone at night. She perceives p=0.45 (45% detection chance due to nearby patrols and CCTV), Bm=0 (no cash), Bp=5 (physical gratification), Ψ=8 (psychological thrill/power from revenge), Fm=2 (minor fine), Fp=10 (prison harm), Δ=3 (shame), and ϵ=+4 (impulse bias). Legal utility U(legal)=3 (wage satisfaction).

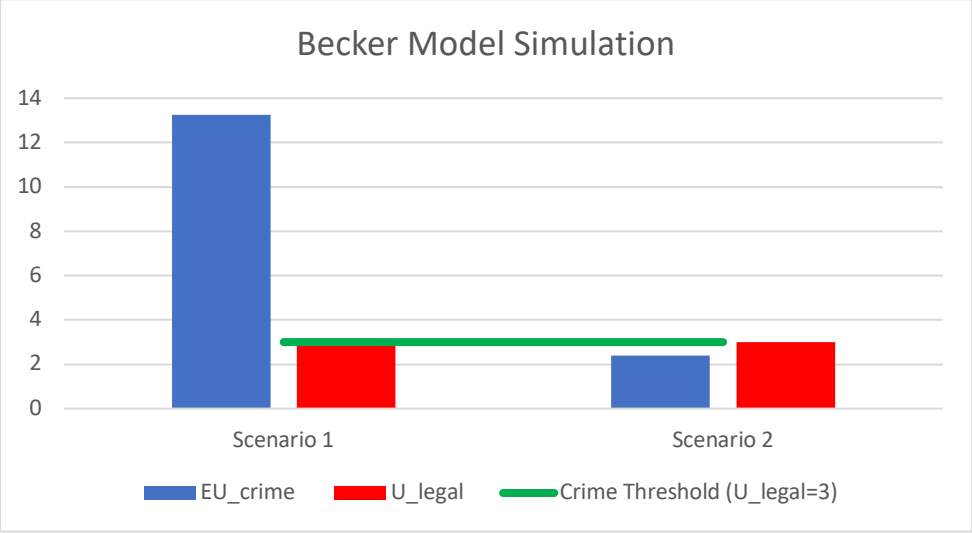
EU (crime) = (1−0.45) [0+5+8] − 0.45 [2+10+3] + 2

=0.55×13−0.45×15+2

=7.15 − 6.75+2

=2.4 < 3

Commission of crime is avoided.



"Green dashed line = U_legal=3 threshold. Crime occurs when EU_crime exceeds line (Scenario 1); deterred when below (Scenario 2)." Clustered bars show EU_crime exceeds

U_legal in low-detection Scenario 1 (crime occurs), but falls below in high-detection Scenario 2 (crime deterred). BNSS timelines raise p, reducing offenses per Becker.

Therefore, in Gary Becker's extended deterrence model from the scenarios above, increasing the perceived probability of detection p reduces crime incidence by elevating expected punishment costs enough to make EU(crime) < U(legal).

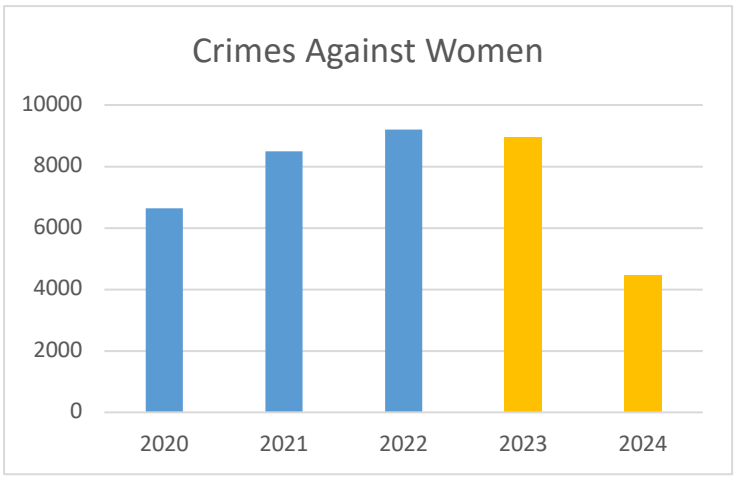
PRE- AND EARLY POST-BNS EVIDENCE

Rape/Gender Crimes: Pre-BNS Nirbhaya-era hikes in F (death penalty) saw no decline (NCRB: 4.45 lakh cases 2022 to 4.48 lakh 2023); early 2025 BNS data (Jan-Jun via PIB) shows marginal dips in reporting delays due to BNSS e-FIRs, but convictions lag at <30%—supporting Becker's emphasis on p > F.

COMPARATIVE ANALYSIS:

Some of the key changes made to The Bharatiya Nyaya Sanhita, 2023 are:

BNS SECTIONS	**SUBJECT**	**IPC SECTIONS**	**SUMMARY OF COMPARISON**
2(3)	Child	New	The description of 'child' under the section 2(3) of BNS was gender neutral.
27	Act done for benefit of child or person with good faith, with consent of guardian.	89	The word "Insane person" was changes into the "Person of unsound mind"
70(2)	Gang rape on the victim who is age of eighteen.	376DB	Section is included as a sub-section in BNS.
70(1)	Gang rape.	376D	No Change. It is included as subsection in BNS.
65(2)	Punishment for rape in certain cases- rape on a woman under twelve years.	376AB	This provision is include in BNS as a sub section.



Source: NCRB REPORTS

The BNS replaced the colonial law, IPC with stricter penalties incorporating deterrence theory through the heightened severity and certainty of punishment. This shift aims to dissuade offenders by increasing the risks contributing to reported declines in such crimes in early post BNS data from region side Delhi.

BNS made the punishments harsher for the sexual offences, mandating death or life imprisonment for gang rape of victim under 18 years compared to IPC's less consistent terms. Therefore by incorporating the deterrence to the legislative provisions will consequently decrease the crime rate which is proven by the expanded Gary Becker's model.

BRIDGING REMAINING GAPS: PROPOSAL

Although India's Bharatiya Nyaya Sanhita (BNS) has made progress in reforming its criminal code, there are still gaps in marital rape exemptions, gender biases, and ambiguous provisions like deceitful intercourse. This has led to proposals that are focused on deterrence, monitoring, global alignment, and targeted legislation. Emerging 2026 studies (e.g., PRS/NCRB previews) suggest BNS/BNSS timelines boost 'p' (detection >30%), potentially yielding 20-30% rational crime reductions per Becker, but gender offences resist due to socio-cultural factors.

Criminalizing Marital Rape

The section 64 should be amended in such a way, removing of the exception 2 which protects husbands from rape charges against wives who are older than 18. The section should

be amended to explicitly mark the marital rape as a separate crime which must be carried out with a minimum sentence of 7 years. Pair with spousal consent safeguards and family court fast-tracks to prevent misuse while upholding bodily autonomy, as stated by Justice Verma and recent parliamentary debates.

Full Neutrality Across Provisions

The Sections 64, 69, and 70 of BNS should be rewritten by including the gender-neutral terms, in order to provide protections to male, transgender, and non-binary survivors. Include aggravated forms for all genders, mirroring Law Commission Report 172, to eliminate survivor discrimination. Section 63 and section 75 defines victim as women or girls and excluding male or transgender despite NALSA v. Union of India[290] (2014) recognizing third gender rights; minors gain neutrality but adults lack recourse post IPC section 377 decriminalization. Rewrite Sections 64, 69, 70 for full gender neutrality, "Perpetrator of any gender; victim includes male/trans/non-binary adults," per ex-CJI U.U. Lalit's 2025 critique[291] and NALSA v. Union of India (2014). Aggravate for power imbalances.

Judicial Guidelines for Section 69 "Deceit"

Mandatory preliminary magistrate inquiries, stricter proof burdens to prevent false claims, and Supreme Court guidelines that clarify "deceitful means" (e.g., false promises must demonstrate initial non-intention via digital trails or witnesses).

Annual NCRB Audits

The NCRB should be directed to publish the BNS specific annual reports. These reports can be used to analyse the conviction rates, pendency, misuse patterns for the Sections 64 and 69 (e.g., acquittal reasons, gender breakdowns), with public dashboards for transparency. The report should tie the findings to mandatory Law Ministry audits, flagging gaps like underreporting in marital cases for targeted interventions. Direct NCRB for annual BNS audits, public dashboards on acquittals (e.g., 68% in deceit cases), misuse by state, tied to Law Ministry revisions.

[290] National Legal Services Authority (NALSA) v. Union of India, AIR 2014 SC 1863.
[291] U.U. Lalit, Critique of BNS Gender Neutrality (LiveLaw, Sept. 24,2025).

Verma - Style Committees: Every 3 Years

The Justice Verma Committee model should be revived every 3 years via periodic independent panels. It should review the BNS sexual offenses by including the survivor inputs, data trends, and the global standards for amendments. It should ensure diverse composition (judges, activists, experts) with binding timelines for government response Revive Verma-style committees triennially, diverse panels (judges/activists) review trends, binding government response in 6 months. Government overruled Verma's rejection of death penalty (no deterrent evidence), yet convictions stagnate at 32%, validating certainity > severity. Verma validated the Becker model by prioritizing 90-day trials (c=celerity) over death penalty (F=severity), exactly what BNSS now mandates but under-implements.

Affirmative Consent Models

The Sweden/Canada's "enthusiastic consent" (Freely given, revocable, and voidable due to incapacity) should be adopted into the BNS through amending or adding a new provision (section 63A) which would shift the burden of proof from "no" to explicit "yes". Criminalize presumptive non-consent in deceit/power imbalance cases, proven via contextual evidence. Adopt affirmative, "Freely given, revocable yes"; presumptive non-consent in deceit/imbalance cases.

Deterrence Theory Implementation

Determine penalties based on the deterrence principles of certainty (rapid FIRs/trials through special courts), severity (life sentences for repeat/aggravated §64), and urgency (mandatory 90-day trial). For dynamic scaling (such as harsher for high-misuse regions) supported by rehabilitation for consensual misunderstandings, use NCRB data.

CASE STUDIES

IPC case laws: Mukesh & Anr. v. State (Nirbhaya Case, 2017)[292]:

In this case. It involved brutal gang rape and murder of 23-year-old women (IPC section 375,376D,302). SC upheld the death penalty, criticizing FIR delays and low conviction,

[292] Mukesh, supra note 2.

prompting 2013 amendments and BNSs gang rape escalations section 70. Emphasized victim dignity under article 21.

Arnesh Kumar v. State of Bihar (2014)[293]

In this case it addressed misuse of section 498A via false arrest in a dowry harassment case. SC issued guidelines, noting legal terrorism from over implications influencing BNS section 84 consolidated cruelty provisions

BNS case laws:

R.G. Kar Medical College rape case[294]

The rape and murder of a trainee doctor at R.G. Kar Medical College and Hospital in Kolkata, West Bengal occurred on 9 August 2024. The doctor's body was discovered in a hospital seminar room in a semi-nude condition with multiple injuries, indicating sexual assault and violence. A post-mortem later confirmed that she had been sexually assaulted and strangled to death. Sanjay Roy, a civic volunteer associated with the Kolkata Police, was arrested on 10 August 2024, a day after the body was found. The crime sparked nationwide outrage and large protests by doctors and civil society demanding justice and improved safety for healthcare workers. Due to concerns about the initial police investigation, the Calcutta High Court transferred the case to the Central Bureau of Investigation on 13 August 2024. The Supreme Court of India also took suo motu cognizance of the matter and expressed concern about the safety of medical professionals. The trial was conducted in camera at the Sealdah Additional District and Sessions Court**.** On 20 January 2025, the court found Sanjay Roy guilty of rape and murder and sentenced him to life imprisonment**.** Life sentence for Sanjay Roy highlighted BNSS forensics/audio-video mandates, but initial cover-up delays underscore sensitization needs.

G. Mohan v. The Additional Deputy Commissioner[295]

The Madras High Court held that not every offence involving a woman us automatically an offence against women under Chapter V of the Bharatiya Nyaya Sanhita. The Court clarified that only offences which are gender-specific or meant to protect women and

[293] Arnesh Kumar, supra note 6.
[294] Alleged Rape & Murder (R.G. Kar), 2024 INSC 613.
[295] G. Mohan v. The Additional Deputy Commissioner, W.P. (MD) No. 9688/2024 (Mad HC 2025).

children fall under chapter V. the nature and ingredients of the offences are more important than the gender of the victim. Special procedural safeguards under BNS apply only to offences expressly covered in Chapter V. This interpretation prevents misuse of women-centric provisions. The judgment ensures a balance between victim protection and fair trial rights. This case clarified Chapter V applies only to gender-specific offenses; nature trumps victim gender, balancing protections vs. misuse. Exposed evidentiary overreach risks.

CONCLUSION

In conclusion, bridging the residual gaps in India's BNS provisions on gender crimes requires a multifaceted strategy with a mixture of blending the legislation, procedural safeguards, vigilant monitoring, global best practices and most importantly the deterrence-grounded punishments. India can affirm survivor autonomy across all identities while curbing misuse by criminalising the marital rape through the amendments of section 64, incorporating the gender-neutral terms and issuing clear judicial guidelines for Section 69 deceit cases. Complementing these with the annual audits of NCRB, periodic Verma-style committees, incorporating the affirmative consent models of Sweden and Canada, and calibrated deterrence—emphasizing certainty, severity, and celerity. These will foster a robust, equitable framework that not only punishes but prevents gender-based violence. Ultimately, these reforms honour constitutional mandates under Articles 14 and 15, transforming rhetoric into reality for a just society where consent reigns supreme and justice is blind to gender.

DECRIMINALISATION OF LABOUR OFFENCES UNDER INDIA'S NEW CRIMINAL LAWS

Ms. K. Pavithra B.E., LL.M.,[296]

I. INTRODUCTION

The enactment of the Bharatiya Nyaya Sanhita, Nagarik Suraksha Sanhita, and Sakshya Adhiniyam represents a foundational overhaul of India's criminal justice system. While much attention focuses on procedural modernisation, a deeper transformation lies in rethinking the scope of criminalisation itself.[297] This paper examines labour law as a critical case study of this shift. Historically, labour statutes have relied heavily on criminal penalties, applying imprisonment indiscriminately to both serious exploitation and minor administrative lapses. This overcriminalisation has led to systemic failure: low convictions, judicial backlog, and adversarial industrial relations.[298]

The new legal framework facilitates a necessary transition from punitive deterrence to regulatory compliance. By emphasising proportionality and efficiency, it creates space for decriminalising technical violations while retaining criminal liability for grave abuses. This paper argues that such a calibrated approach, moving minor offences to civil-administrative channels, enhances both worker protection and judicial effectiveness.[299] It analyses how the principles and procedures of the new criminal laws support this reform, positioning labour decriminalisation as a vital component of a more rational and just legal order. Ultimately, this paper contends that true criminal justice reform requires a deliberate contraction of penal overreach. The decriminalisation of labour offences is not merely a policy adjustment but a structural reorientation that aligns enforcement mechanisms with constitutional safeguards, fosters cooperative compliance, and respects the dignity of all stakeholders within the industrial ecosystem. By examining this intersection, the study contributes to a broader understanding of how India's new criminal laws can redefine the relationship between state power, economic regulation, and social justice.

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[297] Ministry of Home Affairs, Government of India, Statement of Objects and Reasons, Bharatiya Nyaya Sanhita, 2023

[298] National Crime Records Bureau, Crime in India 2022, Vol. I (2023).

[299] Ministry of Labour & Employment, Government of India, Annual Report 2021-22.

II. THE PATHOLOGY OF OVERCRIMINALISATION IN LABOUR LAW

The extensive use of criminal penalties in Indian labour law has deep historical roots in the post-independence regulatory framework. Early labour legislation, developed during India's industrialisation period, adopted criminal sanctions as a primary enforcement tool. Laws such as the Factories Act, Minimum Wages Act, and various state-level labour statutes prescribed imprisonment for numerous violations. This approach reflected a paternalistic regulatory philosophy that viewed criminal penalties as necessary to protect vulnerable workers. However, it failed to distinguish adequately between serious exploitation and technical non-compliance, creating a one-size-fits-all enforcement model.[300]

Empirical data provides compelling evidence of the criminal enforcement model's failure in labour regulation. According to the National Crime Records Bureau (NCRB) reports (2018-2022), conviction rates for offences under major labour acts averaged only 12-18% nationally, with states like Uttar Pradesh recording as low as 9.2% under the Factories Act.[301] Case pendency is particularly severe, with the National Judicial Data Grid showing that approximately 72% of labour-related criminal cases remain pending for over three years, and disposal times average 5-8 years across most states.[302] Under the Industrial Disputes Act, 1947, conviction rates stood at a mere 14.3% between 2018-2022 according to Ministry of Labour data, with 62% of cases pending beyond three years.[303] These statistics reveal a system where criminal prosecution serves more as symbolic threat than effective deterrent, with minimal practical impact on workplace compliance. The Labour Codes of 2020 have already initiated a decriminalisation trend, removing imprisonment provisions for 78 specific violations and converting them to compoundable offences, a move that anticipates and aligns with the broader philosophy of the new criminal laws.[304]

The overcriminalisation of labour offences has generated multiple interconnected problems within the justice system. First, it has overwhelmed criminal courts with cases that are essentially regulatory in nature, diverting judicial resources from more serious criminal

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[300] Upendra Baxi, The Crisis of the Indian Legal System 115-118 (Vikas Publ'g 1982).
[301] National Crime Records Bureau, Crime in India 2018–2022, Vol. II (Offences Under Special and Local Laws) (Gov't of India, Ministry of Home Affairs 2019-2023).
[302] National Judicial Data Grid, Case Pendency-Magisterial Courts: Labour Law Matters (2023), https://njdg.ecourts.gov.in
[303] Ministry of Labour & Employment, Gov't of India, Annual Report 2021-22, ch. 6 (Industrial Relations) (2022).
[304] Code on Wages, 2019, s. 53-54; Industrial Relations Code, 2020, § 86; Occupational Safety, Health and Working Conditions Code, 2020, s. 96; Ministry of Labour & Employment, Press Note on Decriminalisation of Minor Offences (Sept. 2020).

matters. Second, the complex and time-consuming nature of criminal proceedings makes them ill-suited for addressing labour violations promptly. Third, the adversarial nature of criminal prosecution has often strained relations between employers, workers, and regulatory authorities, making cooperative compliance more difficult to achieve. These consequences undermine both labour protection and criminal justice effectiveness.[305]

III. THE PRINCIPLE OF PROPORTIONALITY IN REFORM

The principle of proportionality serves as the constitutional bridge between criminal justice reform and labour law decriminalisation. Rooted in Article 21 of the Constitution, which guarantees the right to life and personal liberty, proportionality requires that state restrictions on liberty must be appropriate, necessary, and the least intrusive means available.[306] The Supreme Court has consistently held that punishment must correspond to both the offence committed and the offender's culpability. This principle demands critical examination of whether imprisonment represents a proportionate response to technical labour violations.

The Bharatiya Nyaya Sanhita reflects an increasing emphasis on proportional sentencing in criminal law. While maintaining serious penalties for grave crimes, the new code demonstrates awareness that not all violations merit equally harsh responses. This philosophical shift creates space for questioning the automatic use of criminal sanctions in regulatory domains like labour law. The code's implicit recognition that criminal law should serve as a last resort rather than first response aligns with arguments for decriminalising minor, non-wilful labour offences where alternative mechanisms can achieve regulatory goals without liberty deprivation.[307] Applying proportionality principles necessitates categorising labour violations based on their nature and severity. Serious violations involving exploitation, endangerment, or deliberate harm, such as bonded labour, hazardous child employment, or wilful safety negligence causing injury, represent *malum in se* wrongs that justify criminal penalties.[308] Conversely, technical violations involving administrative lapses, procedural delays, or paperwork errors constitute *malum prohibitum* offences where civil or administrative remedies represent more proportionate responses. This distinction forms the basis for selective decriminalisation that respects both regulatory objectives and constitutional limits.

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[305] OECD, Regulatory Enforcement and Inspections: OECD Best Practice Principles 19-23 (2014)
[306] Modern Dental College & Research Ctr. v. State of Madhya Pradesh, (2016) 7 S.C.C. 353, 60-65
[307] K.D. Gaur, Criminal Law: Cases and Materials 45-47 (8th ed. 2016)
[308] Law Comm'n of India, Report No. 268: Amendments to Criminal Law 12-14 (2017)

IV. CONSTITUTIONAL BALANCE: LIBERTY AND DIGNITY

Article 21 of the Constitution provides strong support for decriminalising minor labour offences. The right to life and personal liberty, as interpreted by constitutional courts, includes protection against arbitrary state coercion and disproportionate deprivation of liberty.[309] The widespread use of criminal law for technical regulatory violations represents a significant intrusion into economic liberty and personal freedom. Threatening entrepreneurs with imprisonment for paperwork errors or minor compliance issues amounts to disproportionate state action that can stifle economic initiative and create regulatory uncertainty. Decriminalisation in appropriate cases thus serves as a liberty-enhancing reform consistent with Article 21's requirement of fairness, reasonableness, and proportionality.[310]

Article 23 imposes positive obligations on the state to prohibit forced labour, trafficking, and practices violative of human dignity.[311] This provision establishes crucial boundaries for decriminalisation efforts. Reform cannot become pretext for weakening protections against serious labour exploitation. Grave violations attacking human dignity, including bonded labour, hazardous child labour, and systematic wage theft, must remain firmly within criminal law's domain. The continued and strengthened criminalisation of these core abuses provides legitimacy to decriminalising peripheral technical violations, ensuring balanced reform. The constitutional framework requires harmonising the protections of Articles 21 and 23 through selective, principled decriminalisation. This involves maintaining criminal sanctions for dignitarian harms while replacing them with administrative measures for technical violations. Such an approach respects both fundamental rights: it prevents excessive state coercion while ensuring protection against exploitation. This constitutional balance transforms decriminalisation from deregulation into smarter regulation, a recalibration of state power that enhances both liberty and welfare through more appropriate institutional design.[312]

V. SHIFTING FROM PUNITIVE TO REGULATORY JUSTICE

The traditional punitive model of labour law enforcement has demonstrated clear limitations in practice. Based on deterrence through severity, this model assumes that fear of

[309] Maneka Gandhi v. Union of India, (1978) 1 S.C.C. 248, 56-57 (India).
[310] Anuradha Bhasin v. Union of India, (2020) 3 S.C.C. 637, 68-70 (India).
[311] People's Union for Democratic Rights v. Union of India, (1982) 3 S.C.C. 235, 14-17 (India).
[312] Upendra Baxi, The Crisis of the Indian Legal System 132-135 (Oxford Univ. Press 1982).

imprisonment ensures compliance. However, empirical evidence shows criminal prosecution to be rare, conviction even rarer, and the process too slow to provide timely justice. The adversarial nature of criminal proceedings also damages workplace relations, making employers view regulators as adversaries rather than compliance partners[313]. These limitations render punitive enforcement ineffective for achieving sustainable labour standards.

Decriminalisation enables a shift toward regulatory justice; an enforcement model focused on securing compliance rather than exacting punishment. This approach emphasises certainty, swiftness, and proportionality in regulatory responses. It employs graduated enforcement strategies beginning with advice and warnings, escalating to administrative penalties for non-compliance, and reserving criminal prosecution for serious or persistent violations. In this model, regulators function as compliance facilitators who help entities understand and meet obligations, using penalties as last resorts rather than primary tools.[314]

Adopting regulatory justice principles offers multiple benefits for the justice system and labour governance. First, it reduces criminal court burdens by transferring minor cases to administrative tribunals, supporting the BNSS's objective of judicial decongestion. Second, it enhances enforcement effectiveness by ensuring violations face prompt consequences. Third, it improves regulatory relationships by reducing adversarial tensions. Fourth, it allows better targeting of enforcement resources toward serious violations. These benefits collectively support more efficient and effective labour protection.[315]

VI. SYNERGY WITH PROCEDURAL AND EVIDENTIARY REFORMS

The Bharatiya Nagarik Suraksha Sanhita provides essential procedural foundations for effective decriminalisation. Its emphasis on digitisation and process streamlining enables efficient administrative enforcement mechanisms. Provisions for electronic filing, virtual hearings, and digital notice service allow quick resolution of regulatory violations through non-criminal channels. This procedural efficiency is crucial because regulatory justice depends on timely responses to non-compliance. The BNSS's reforms make possible the swift imposition and collection of administrative penalties, creating credible deterrence without relying on

[313] Supreme Court of India, Hindustan Steel Ltd. v. State of Orissa, AIR 1970 SC 253
[314] Int'l Labour Org., Labour Inspection and Compliance: A Guide to Modern Enforcement Strategies 27-31 (2015).
[315] Law Comm'n of India, Report No. 277: Wrongful Prosecution (Miscarriage of Justice): Legal Remedies 19-22 (2018)

criminal sanctions.[316] The Bharatiya Sakshya Adhiniyam modernises evidence law in ways that support decriminalisation. By granting legal validity to electronic records, the BSA transforms labour regulation enforcement. Digital wage records, electronic attendance logs, and timestamped inspection reports can now serve as reliable evidence in administrative proceedings. This evidentiary clarity reduces factual disputes and expedites case resolution. When regulators can present automated evidence of violations, administrative adjudication becomes faster and fairer. This evidentiary foundation makes non-criminal enforcement both more efficient and more reliable.[317]

Together, the BNSS and BSA enable development of integrated digital platforms for labour regulation. Such systems could facilitate real-time compliance monitoring, automated violation detection, online penalty payment, and transparent enforcement tracking. This technological infrastructure transforms labour enforcement from sporadic inspections to continuous oversight. It also reduces opportunities for arbitrary action by creating clear digital trails. The integrated digital framework represents the operational backbone that makes decriminalisation feasible without compromising regulatory effectiveness.[318]

VII. IMPLEMENTATION CHALLENGES AND SAFEGUARDS

Decriminalisation carries implementation risks requiring careful management. Primary concerns include creating enforcement gaps if alternative mechanisms prove ineffective, imposing penalties insufficient to deter violations, establishing inaccessible alternative forums, and disproportionately affecting vulnerable workers. There is also risk that decriminalisation might be misinterpreted as deregulation, leading to weakened labour protections. Additionally, inadequate capacity building for regulators could undermine transition to compliance-focused enforcement. These risks necessitate comprehensive safeguards and strategic implementation planning.[319] Successful decriminalisation requires multiple safeguards.

Administrative penalties must be substantial enough to deter violations, ideally exceeding economic benefits of non-compliance. Regulatory capacity needs strengthening through training, staffing, and technological resources. Alternative dispute resolution forums

[316] Ministry of Home Affairs, Gov't of India, Statement of Objects and Reasons, Bharatiya Nagarik Suraksha Sanhita, 2023
[317] Bharatiya Sakshya Adhiniyam, No. 47 of 2023, s. 2(1)(d), 61-65 (India)
[318] NITI Aayog, Responsible AI for All: Operationalising Principles for India 34-36 (2021)
[319] International Labour Organization, Effective Labour Inspection: A Guide for Labour Inspectorates 41-44 (2019)

must be accessible, efficient, and empowered to award meaningful remedies. Legal aid and awareness programs should help vulnerable workers navigate reformed systems. Most crucially, criminal enforcement must remain robust for serious violations to maintain overall system credibility and deterrence.[320] Effective implementation requires systematic monitoring and evaluation frameworks. Key performance indicators should include compliance rates, penalty collection efficiency, adjudication timelines, worker access to justice, and prosecution rates for retained criminal offences. Regular evaluation enables evidence-based adjustments to policies and procedures. Stakeholder feedback mechanisms should inform continuous improvement. Such monitoring ensures decriminalisation achieves intended objectives without unintended negative consequences, supporting adaptive governance responsive to empirical evidence.[321]

VIII. DECRIMINALISATION AS REFORM TEMPLATE

The problem of regulatory overcriminalisation extends beyond labour law to numerous domains including environmental protection, corporate governance, financial regulation, and consumer safety. In each area, legislatures have often defaulted to criminal penalties as primary enforcement tools, with similar negative consequences: judicial overload, ineffective deterrence, and strained regulator-regulated relationships.[322] Labour law decriminalisation therefore offers valuable lessons for broader criminal justice reform across the regulatory state.

The analytical framework for labour decriminalisation, distinguishing serious wrongdoing from technical compliance failures, applies directly to other regulatory fields. In environmental law, this means maintaining criminal penalties for deliberate pollution while decriminalising minor reporting delays[323]. In corporate law, it means keeping criminal liability for fraud while removing it for technical filing errors. In consumer protection, it means criminalising dangerous products but not minor labelling issues. This principled approach enables sector-specific rationalisation of criminal law. Applying this template across regulatory domains represents full realisation of structural reform envisioned by new criminal laws. It moves toward a justice system where criminal law addresses serious wrongs while regulatory

[320] International Labour Organization, Access to Justice for Workers: Strengthening Labour Dispute Resolution Mechanisms 55-58 (2020)
[321] World Bank, Improving Regulatory Governance: Evaluation and Monitoring Tools 31-35 (2017)
[322] V. Bhattacharya, Criminal Law and Regulatory Overreach in India 77-81 (2021)
[323] International Labour Organization, Principles of Regulatory Compliance: Cross-Sector Applications 33-36 (2020)

compliance is secured through more appropriate mechanisms. This rationalisation frees investigative and judicial resources for crimes threatening fundamental social interests while establishing efficient compliance systems.[324] Such holistic reform creates more legitimate, effective, and constitutionally-aligned governance across multiple domains.

IX. CONCLUSION

The ultimate success of India's new criminal laws will be measured not merely by procedural efficiency but by their contribution to more legitimate, proportionate, and effective justice. Decriminalisation of minor labour offences represents a critical frontier in this transformative project. It embodies the principle that genuine reform sometimes requires state restraint, using coercive power more selectively and wisely. When implemented with proper safeguards, decriminalisation enhances both regulatory effectiveness and respect for liberty.

Properly conceived labour decriminalisation strengthens rather than weakens worker protection. It replaces symbolic severity with smart enforcement, substituting failed punitive approaches with credible regulatory mechanisms. It protects economic actors from disproportionate penalties for technical errors while empowering regulators with better tools to address serious exploitation. This balanced approach recognises that liberty and welfare, often positioned as competing values, can be mutually reinforcing through intelligent institutional design respecting both constitutional commitments.

The challenge moving forward involves ensuring decriminalisation proceeds in principled, evidence-based manner. It must be grounded in constitutional values, supported by robust alternative mechanisms, and guided by unwavering commitment to punish serious exploitation. In meeting this challenge, labour law reform can model broader transformation, demonstrating how India can build a justice system that is not only efficient but fundamentally fair. This represents the deeper promise of new criminal legislation: not just modernising procedures but rethinking what justice requires in regulatory governance.

[324] OECD, Toward Smarter Regulation: Balancing Criminal and Administrative Enforcement 29–33 (2021)

REIMAGINING CRIMINAL JUSTICE THROUGH CONSTITUTIONAL DIGNITY: A GENDER-CENTRIC ANALYSIS OF THE BHARATIYA NYAYA SANHITA, 2023

Ms. Ruthra B[325], Ms. Sumithra S[326]

1. INTRODUCTION

The maxim "Dignitas hominis suprema lex," meaning the dignity of every human being is the supreme law, reflects the underlying philosophy of the Bharatiya Nyaya Sanhita, 2023.Anchored in constitutional morality, the BNS reimagines India's criminal justice system by decisively departing from the colonial, control-oriented discipline of the Indian Penal Code (IPC) and embracing a justice-centric 'Nyaya' paradigm grounded in dignity, equality, and substantive justice. BNS Enacted on 1st July 2024, the BNS replaces the IPC's 511 provisions with a streamlined framework of 358 sections, signaling a normative shift towards Article 21's guarantee of life, personal liberty, and inherent human dignity. Criminal law, under the BNS, is no longer conceived merely as an instrument of deterrence or sovereign power, but as a constitutional mechanism for inclusion, protection, and the realization of substantive equality. This transformation is reflected in the removal of colonial penal legacies, the recalibration of sentencing philosophy, strengthened procedural safeguards, and enhanced recognition of victim rights. Constitutional dignity under the BNS operates as a unifying normative principle integrating equality (Article 14), non-discrimination (Article 15), and fraternity into enforceable penal norms. This is evident in the restructuring of offences addressing identity-based violence, caste-based atrocities, crimes against children, and consent-centric sexual offences, reflecting the Supreme Court's emphasis on substantive equality and the State's positive obligation to protect vulnerable lives, as articulated in ***State of Karnataka v. Appa Balu Ingale (1995)***.[327] Most significantly, the BNS advances a gender-centric and vulnerability-responsive criminal justice framework structured around six interrelated pillars of protection - women, children, transgender persons, marginalized communities, persons with disabilities, and senior citizens. Through trauma-informed provisions, identity-sensitive classifications, and capacity-aware safeguards, the law recalibrates criminal justice away from offender-centric punishment towards victim-centric and dignity-oriented justice, embedding constitutional morality within both its substantive content and institutional design. Situated

[325] Student, BA.LL.B.., KMC College of Law, Tirupur, India.
[326] Student, BA.LL.B.., KMC College of Law, Tirupur, India.
[327] *State of Karnataka V. Appa Balu Ingale*, (1995) 3 Scc 97.

within evolving international human rights norms and South–South constitutional dialogues, the Bhartiya Nyaya Sanhita aspires to bridge the gap between normative promise and social reality. By incorporating intersectional, context-specific, and future-oriented safeguards - including responses to technology-mediated crimes - the BNS represents a transformative shift from punishment to protection and from power to dignity. Against this backdrop, the present study examines the structural and substantive transformations introduced by the BNS through a gender-centric and dignity-based constitutional lens.

Figure: 1.1

The above figure 1.1 shows the Transformation of Criminal justice

2. LITERATURE REVIEW

1. *A Shift from Gender Centric to Gender Neutral Criminal Laws, was written by Shweta Pathak, (Volume 2, Issue 1, 2020),*

This study examines the constitutional validity of India's gender-centric criminal law framework. The author emphasizes that excessive woman-centric legislations, though historically justified, now conflict with Articles 14, 15, and 21 by excluding male victims and marginalizing transgender persons. Through doctrinal analysis of Section 498-A IPC, sexual offence provisions, workplace harassment laws, and transgender rights jurisprudence, the paper highlights presumptions of male guilt and binary gender assumptions. It stresses the need for gender-neutral criminal laws grounded in constitutional dignity, while identifying gaps such as limited empirical analysis and inadequate engagement with intersectional and socio-cultural realities.

2. *"Gender Neutrality in New Criminal Laws in India: A Critical Study with Reference to Sexual Offences" was written by Prithviraj Chavan Volume 7, Issue 3 (2025),*

The author critiques BNS, 2023 with a focus on gender-neutrality concepts for sexual offenses and how male/female assumptions remain entrenched in our legal system. He posits that this

binary orientation of law reflects a legislative opportunity lost to better link criminal law with constitutional morality as well as concurrently evolving views towards gender as set forth in the decisions of NALSA, Navtej Johar and Puttaswamy. The comparison to the UK, Canada, Australia and South Africa situates India's position within a global rights-based framework. However, the paper's main limitation is its narrow scope regarding the intimacy between intersectional vulnerabilities and victim-focused remedies other than those related to sexual offenses. Additionally, the paper highlights normative contradictions between dignity under the Constitution and the exclusion of male, transgender and non-binary survivors of sexual violence.

2.1. RESEARCH METHODOLOGY

This paper analyses the structural and substantive reforms of the Bharatiya Nyaya Sanhita (BNS) of 2023 through the lenses of vulnerability, doctrine, and comparison, using a rigorous theoretical and legal methodology. Reflecting on the constitutional right to dignity, this study examines how the BNS changes Indian Criminal Law by creating a system that is inclusive, protective, and equitable. It represents an evolution towards justice-oriented approaches that promote human dignity and away from colonial, punitive approaches. The comparative analysis draws from various South-South constitutional experiences as well as globally-recognized best practices in disability law, gender equality, and child protection. This study looks at women, children, transgender individuals, persons with disabilities, seniors and other marginalized communities through an intersectional lens by employing a six-pillar strategy to identify structural gaps and new issues including technology-facilitated crimes, thus illustrating the potential of the BNS to reform Indian Criminal Law from being systemically-based on power to giving primacy to justice grounded in human dignity.

2.2. RESEARCH QUESTION

1. Does the Bharatiya Nyaya Sanhita, 2023 transform constitutional dignity into an enforceable foundation of criminal justice, breaking from colonial penal logic?

2. Does the BNS deliver substantive gender justice for vulnerable groups, or does it merely repackage formal equality?

3. Criminal Law beyond Sovereign Power: Re-centering Constitutional Dignity in the Age of Transformative Justice

Indian criminal jurisprudence has been organized upon the state-centered (colonial) paradigm for more than 150 years, placing greater value on state authority than individual dignity and autonomy. The Bharatiya Nyaya Sanhita, 2023, was created to address this historical legacy with a transformative shift in the organizing principle of penal governance from that of the state to that of individual dignity as defined in the Constitution.[328] Unlike the IPC, which has relied almost exclusively upon judicial interpretation, the BNS places dignity, autonomy, and substantive equality directly into the statutory framework, representing a major change from a law based on sovereign power to a law based on justice as informed by personhood.[329] Judicial interpretation of constitutional morality in Supreme Court case law ***(Navtej Singh Johar v. Union of India, 2018; Joseph Shine v. Union of India, 2018)*** confirms the transition away from social norms, hierarchies, and customary practices having greater force than constitutional principles.[330]

The BNS's commitment to a dignity-based rationale for the law provides for several new and unique legal mechanisms, such as the Dignity Threshold Test, consent-sensitive offenses, classifications of offenders and victims sensitive to vulnerability, proportionality of punishment, and the recognition of victims as active participants in legal processes.[331] The Dignity Threshold Test provides for a legislative participation requirement to assist courts in criminalizing only those acts that demonstrably violate an individual's autonomy, thus redefining an act of crime as a violation of an individual's identity constituting a constitutional violation, rather than as an offense against the state only.

The BNS limits the ability of courts to exclusively determine the legitimacy of legislative acts and, thereby, impositions of penalties. The BNS holds the legislature accountable to constitutional principles through the imposition of human-centric and normatively sound penal governance.[332]

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[328] Bharatiya Nyaya Sanhita, 2023, No. 45, Acts of Parliament, 2023 (India).
[329] Indian Penal Code, 1860, No. 45, Acts of Parliament, 1860 (India).
[330] *Navtej Singh Johar v. Union of India*, (2018) 10 S.C.C. 1 (India); *Joseph Shine v. Union of India*, (2018) 9 S.C.C. 1 (India).
[331] Bharatiya Nyaya Sanhita, 2023 §§ 2–5 (India).
[332] Bharatiya Nyaya Sanhita, 2023, No. 45, Acts of Parliament, 2023 (India).

The BNS operationalizes intersectional justice by addressing inequalities across gender, age, disability, caste, sexuality, and socio-economic status. Its criminal law framework embeds structural sensitivity and affirmative protections for vulnerable populations. The aim is to create restorative protection mechanisms through adherence to constitutional law, proportionality, fairness, and prevention of excessive coercion, thereby centering and prioritizing the needs of marginalized populations. For example, addressing and creating distinct categories for people with disabilities, seniors, and women victims would categorically excluded from existing universal laws.

The BNS also provides for the creation of prosecution-based preventive and remedial mechanisms, such as procedures for victim-friendly investigations, a digital evidence protocol, and early intervention mechanisms to address newly created crimes, such as digital coercion, online sexual exploitation, and identity-related cyber violence.

However, there is still a lack of protection for male, transgender, and non-binary survivors of gender-based sexual violence, who are under protected by criminal laws. The limitations of the BNS reflect the tensions between legislative caution and constitutionalizing within the context of the need for gender-inclusive legislation. Further, there is a need for enhanced victim support and financial compensation schemes, as well as the importance of gender-sensitive training for law enforcement.

Ultimately, the BNS represents a significant transformation of criminal law in India, whereby the authority of the State has shifted from an emphasis on power to the inherent right of all persons to dignity as part of the social contract, and justice is again framed as protective and not punitive. The BNS, therefore, provides the foundation for the transformative change of criminal justice in India by addressing systemic racism and colonialism, both of which are embedded within intersectional, victim-centered approaches, thereby providing a framework from which to support the creation of an inclusive, rights-oriented criminal justice system that is both jurisprudential grounded and constitutionally accountable, and provides a operational framework for penal governance.

4. Re-Architecting Criminal Justice: Structural Shifts from Colonial Penalism to Constitutional Accountability under BNS

The Bharatiya Nyaya Sanhita, 2023 (BNS) represents a major milestone in the evolution of the criminal justice system in India, establishing constitutional dignity as an enforceable basis for

Indian criminal law and replacing the state-centric punishment of the colonial era with rights-based, inclusive, and victim-centric justice.[333] By going beyond cosmetic changes to Indian Penal Code reform, the BNS focuses on accountability, protection of vulnerable populations, responsiveness to technological advancements, and procedural fair play, also by placing women, children, transgender persons, persons with disabilities, marginalized groups, and senior citizens as priorities in penal governance.

For women, many of the long-standing gaps in statutory law have been definitively filled. For example, Section 69 of the BNS criminalizes sexual relations that are facilitated by false promises of marriage, with a penalty of ten years in prison and a fine.[334] Furthermore, the penalties for sexual offenses have been strengthened overall; Section 64 of the BNS mandates the death penalty for the rape of minors (under 18 years of age) and Section 70 of the BNS provides for life imprisonment or the death penalty for the gang rape of minors, reinforcing the principle of zero tolerance for such conduct.[335] Additionally, public stripping, stalking, voyeurism, the throwing of acid, and the organization of trafficking are all defined as separate offenses with mandatory minimum penalties and a requirement for the introduction of forensic evidence.

Procedural reforms relating to the criminal justice system are also included in the BNS; for example, the mandatory registration of e-FIRs within three days, the ability to register FIRs across India, and the video graphed recording of victim testimonies will reduce the length of time it takes to provide justice, decrease the likelihood of abusing the procedural protections afforded to victims, and support a victim-sensitive approach to justice.[336]

Sections 95-143 provide children with special protection. A variety of criminal offenses against children include trafficking, exploitation, abandonment, forced labor and pornography, which carry the maximum sentence of life imprisonment, total forfeiture of assets or the death penalty in appropriate circumstances.[13] Article 21 ensures that children have access to child-friendly processes, e.g. in-camera trials, mental health support, preservation of forensic and digital evidence.[337]

[333] Bharatiya Nyaya Sanhita, 2023 § 69 (India).
[334] Bharatiya Nyaya Sanhita, 2023 § 69 (India).
[335] Id. §§ 64, 70.
[336] Id. §§ 173, 176, 193 (procedural and evidentiary reforms).
[337] Id. §§ 95–143.

Transgender persons are explicitly included by using gender-neutral language in sections 63-70, which includes equality in sexual offense protections; compensation for vulnerable persons; fast-tracking of trials; and requirements for police sensitivity training. Marginalized groups have expansively defined "organized crime" to include cyber fraud; land grabbing; and financial fraud. Persons with disabilities are given higher sentences under sections 64(2), 70(2), and 115 when convicted of a violent or exploitative offense, as well as procedural protections to help ensure access to justice. Seniors have additional protections against fraud, property crime, or abuse under sections 111 and 115, with factors of age and dependency as aggravating circumstances in the imposition of sentences.

The BNS has combined the Dignity Threshold Test, offenses based on consent sensitivity, vulnerability awareness classifications, and restorative sentencing, creating an entirely new approach to both functionally and doctrinally law. The BNS changes the focus of criminal law away from enforcement based on the exercise of power, towards equity-based law that takes into consideration constitutional rights available to individuals regardless of gender, age, disability, or socioeconomic status (i.e. the concept of inherent dignity). Working in conjunction with enhancements in procedure through the use of electronic forensics, artificial intelligence-assisted investigations, and structured compensation to victims of crime, the BNS creates a globally recognized model for an intersectional and constitutionally accountable framework, and thus delivering to understand constitutional morality, both in theory and reality.

5. Substantive Penal Transformation and the Six Pillars of Gender Justice

5.1. Child-Centric, Trauma-Informed Justice: The BNS drastically changes the Indian criminal justice system by considering children people with rights who should be treated equally with adults. There will be no more paternalism. For example, Section 28 says you cannot give legal consent if you are less than 12 years old, so there is no violation of Articles 14 and 15 of the Constitution.[338] Section 30 allows actions taken in good faith; however, no one will be able to take any action which causes harm, thereby strengthening the idea of ***"Salus populii suprema lex"*** (the welfare of the people is the highest law) and establishing a duty to care for children.[339]

[338] Bharatiya Nyaya Sanhita, 2023, § 28 (India).
[339] Bharatiya Nyaya Sanhita, 2023, § 30 (India).

Judicial interpretation has always focused on the protection of children. In the case of ***Bharatiya Streeshakti Sanghatana v. State of Maharashtra***,[340] the Supreme Court recognized the vulnerability of children, as well as the responsibility of the State to protect them.[19] The enactment of Sections 93 and 94 make criminal acts of abandonment, exposure and concealment of birth, [341]thereby removing private immunity for these acts and re-affirming the State's role as ***parens patriae*** as supported by ***Lillu v. Haryana***[342]

The BNS considers the breach of trust by guardians as an aggravating circumstance to impose liability on the guardian to reinforce a child-centered judiciary. Sections 137 and 139 cover kidnapping, forced labour, and mutilation for the purposes of begging, with heavy penalties. As mentioned in section 139(3), the evidentiary burden is reversed due to the imbalance of power (lex non cogit ad impossibilia) and creates an offence for grooming through the internet, or committing any form of online sexual abuse, so that the law and digital harm are consistent with the CRC and its obligations.[343]

The BNSS use trauma-informed methods, like in-camera hearings and audio/video recording, to minimize secondary victimization and to promote child-centered justice. Though Section 118 of the Evidence Act still governs testimonial competence, the BNS and BNSS frameworks reduce repeated testimony, hostile cross-examination and procedural harassment. Timelines for proceedings are expedited so that delays do not remove the child from being a participant and thus compromise their psychological integrity and that of the adjudicative process.[344]

Restorative Justice goes beyond convictions to also encompass the provision of reparations and crisis support services and the responsibility of those in positions of authority when children are harmed. One major flaw in the current child justice system is the lack of a coherent and consistent post-trial structure for the Psycho-Social Rehabilitation of Children which addresses their educational and reintegration needs. The BNSS has made strides in improving child justice by creating a comprehensive child justice model that includes full criminalization of child victimization, a comprehensive and uniform consent doctrine, sensitivity to the evidentiary needs of child victims and procedural safeguards that constitutionally recognize

[340] Bharatiya Streeshakti Sanghatana v. State of Maharashtra, (2022) SCC Online (India).
[341] Bharatiya Nyaya Sanhita, 2023, §§ 93–94 (India).
[342] (2013) 14 SCC 643 (India)
[343] Bharatiya Nyaya Sanhita, 2023, §§ 137, 139 (India).
[344] Indian Evidence Act, 1872, § 118 (India).

children as persons with enforceable rights and entitlements to protection, dignity, and development.

International child protection frameworks include examples that can be used to enhance India's BNS/BNSS approach. Sweden implements restorative justice via a holistic rehabilitation process, facilitating long-term psycho-social recovery, educational reintegration, and the monitoring of the child victim and offender's progress. New Zealand's Oranga Tamariki - Children's Act 2014 enables child involvement in justice proceedings, trauma-informed hearings with clients represented by trained advocates, and procedural safeguards for children. Although the BNS encompasses numerous elements of child protection, it still lacks adequate post-trial rehabilitation services and fully institutionalizes child involvement in justice processes. By utilizing these examples, the BNS can promote its vision of child well-being - based on dignity and development - and more effectively realise the constitutional rights of children to be protected and supported.[345]

5.2. Women and Bodily Autonomy: Re-centering Consent, Coercion, and Substantive Equality: The Bharatiya Nyaya Sanhita, 2023 really shakes up criminal law in India and, for once, puts constitutional dignity at the heart of things - especially when it comes to women and their right to decide what happens to their own bodies. Instead of sticking to those tired, colonial ideas about morality and social order, the BNS pushes consent, autonomy, and actual equality to the front. It lines up with the constitutional maxim ***ubi jus ibi remedium*** - where there's a right, the law has to offer a real remedy. So now, the law doesn't just look at women as folks in need of constant protection. It's finally treating them as people with rights of their own, whose dignity deserves direct and serious legal backing.

One of the big changes the BNS brings is how it tackles sexual acts that happen because of lies. Section 69 comes right out and criminalizes sex that happens through deception - like empty promises of marriage, jobs, or other opportunities.[346] Before this, under the Indian Penal Code, courts had to twist themselves into knots trying to fit these situations into the law, and the results were all over the map. The Supreme Court has hammered this point home again and again: if someone gives consent to sex based on a lie - especially when that promise was never

[345] Convention on the Rights of the Child arts. 3, 12, 39, Nov. 20, 1989, 1577 U.N.T.S. 3; Oranga Tamariki—Children's Act 2014 (N.Z.)
[346] Bharatiya Nyaya Sanhita, 2023, § 69

real to begin with - that's not real consent.[347] This reflects the maxim ***consensus ad idem*** - real consent happens only when both people actually agree to the same thing. If one person is tricked or misled, that agreement falls apart. By spelling this out clearly, the BNS stops looking at women's behavior through a judgmental lens and instead stands up for their right to real choice, aligning with constitutional protection of bodily autonomy.

The BNS also takes sexual harassment seriously and puts dignity right at the center. Section 75 isn't just about unwanted touching or physical advances. It also covers demands for sexual favors, lewd comments, or even showing someone pornography.[348] And location doesn't matter - public places, workplaces, homes - it's all covered. This builds on the shift that started with ***Vishaka v. State of Rajasthan,*** where sexual harassment was recognized as a violation of equality and dignity under Article 21.[349] Later, in ***Apparel Export Promotion Council v. A.K. Chopra,*** the Court reaffirmed that harassment violates bodily autonomy and mental integrity.[350]Courts have also emphasized victim dignity during trial processes. The BNS carries forward the maxim ***actus non facit reum nisi mens sit rea*** - meaning intent to violate dignity matters as much as the act itself. On adultery, the BNS flips things by decriminalizing it, aligning criminal law with constitutional liberty, privacy, and equality. In ***Joseph Shine v. Union of India,*** the Supreme Court struck down the adultery law for treating women as property and violating Articles 14, 15, and 21.[351]

By removing adultery from penal law, the system respects the maxim ***de minimis non curat lex*** - the law does not concern itself with purely private consensual acts. Still, Section 83 continues to punish coercion or unlawful detention of a married woman.[352] This aims not at moral policing, but at addressing exploitation. Judicial recognition of reproductive and bodily autonomy further reinforces this approach.

If you zoom out, these changes represent a move from moral policing toward constitutional dignity. Women are increasingly recognized as autonomous individuals entitled to equal

[347] *Deepak Gulati v. State of Haryana, (*2013) 7 SCC 675
[348] Bharatiya Nyaya Sanhita, 2023, § 75
[349] (1997) 6 SCC 241
[350] (1999) 1 SCC 759
[351] Bharatiya Nyaya Sanhita, 2023, § 83
[352] *Anuj Garg v. Hotel Association of India*, (2008) 3 SCC 1

protection. Courts have stressed that real equality depends on gender-sensitive interpretation of laws.

The old Indian Penal Code, by contrast, reflected colonial morality and narrowly framed consent, leaving gaps in dealing with deception and harassment. The BNS is not perfect, but it clearly moves criminal law closer to constitutional values, marking the beginning of a dignity - centered justice framework.

5.3. Intersectional Dignity and Penal Recognition of Vulnerable Populations: The BNS, 2023 shifts the criminal law paradigm away from colonial governance to constitutional justice based on equality and dignity. The BNS also targets historically excluded or criminalized groups such as transgender individuals, scheduled castes/tribes, those with disabilities and the elderly in an effort to align the law with constitutional morality; by doing so, the BNS aims to provide a just and accessible remedy for those communities that are subjected to structural violence and exploitation under the principles of ***ubi jus ibi remedium***.

Transgender rights have changed in a major way since the Constitution was adopted. Under the IPC, there are no transgender people because of rigid assumptions that there are only male and female genders as determined by colonial laws, which also made many transgender people criminals. Transgender identity, dignity, autonomy and equality are recognized as legal rights by the case ***NALSA v. Union of India***.[353] The BNS uses a dignity-based approach to its definitions of sexual offences and bodily offences but will still need more definitional work for transgender individuals to be included.

It's foremost for criminal law to engage with structural violence against SC/ST communities. The caste system was insufficiently addressed by the IPC, resulting in the creation of the SC/ST (Prevention of Atrocities) Act, 1989.[354] The new BNS does not replace existing special laws but instead provides greater dignity and accountability by increasing responses to organized crime, mob violence and offences against vulnerable groups, thereby upholding substantive equality as confirmed in the case of the ***State of Karnataka v. Appa Balu Ingale***.[355]

Under the IPC, individuals with disabilities have experienced obstacles in reporting criminal activities, providing evidence, and accessing justice. The Constitution and disability legislation

[353] *NALSA v. Union of India*, (2014) 5 SCC 438.
[354] Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.
[355] State of Karnataka v. Appa Balu Ingale, (1995) Supp (4) SCC 469.

provide for dignity, autonomy and accessibility. With respect to People with Disabilities, the BNS and RPWD Act 2016 have also recognized vulnerabilities and determined the appropriateness of consent based on a person's capacity to choose. The maxim ***actus non facit reum nisi mens sit rea*** ensures that the intent and capacity of both the victim and accused are adequately assessed.[356]

Elderly people have a greater chance of being abused, neglected, or financially exploited than other age groups. The IPC does not adequately protect elderly people from these crimes. The BNS, which is also called the BDS, increases punishment for crimes involving betrayal of trust, financial exploitation of elders, and causing physical harm to an elderly person, and recognizes crimes against dependent adults are more serious than those against people who are not dependent **(*Ashwani Kumar v. Union of India*)**.[357] Therefore, all persons regardless of their age should be treated with respect and dignity.

The BNS moves the focus of criminal law from formally equal law to the protection of the person based on lived experiences of vulnerabilities in relation to the principle of ***salus populi suprema lex***. The BNS gives priority to ensuring that dignity, equality, autonomy, and accountability are given priority to ensure that they are realized for marginalized communities such as transgender persons, Scheduled Caste/Scheduled Tribe persons, persons with disabilities, children, and the elderly, while relying on enforcement of other laws or institutions for them to have the full benefit of the constitutional text.

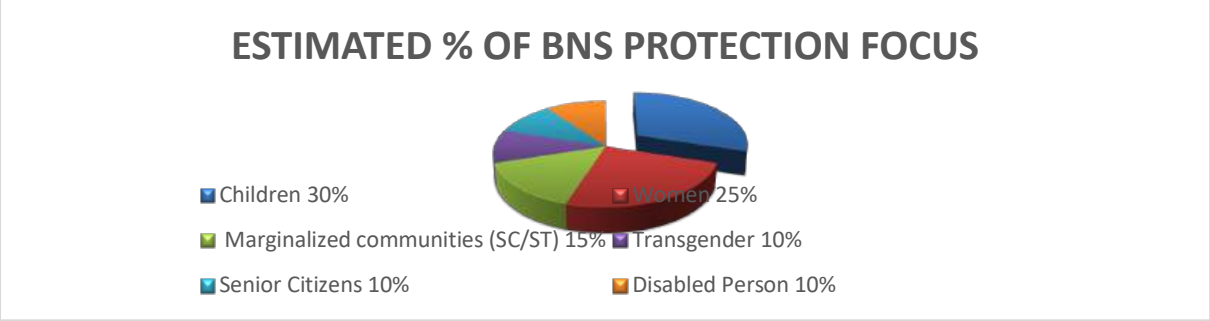

Figure 1.2

The above pie chart illustrates the estimated % distribution of protection focuses extended to various vulnerable groups under the Bharatiya Nyaya Sanhita, 2023.

[356] Rights of Persons with Disabilities Act, 2016.
[357] Ashwani Kumar v. Union of India, (2019) 2 SCC 636.

5.4. Gender Neutrality vs Gender Inclusivity: Recalibrating Equality under the BNS

S.NO	ASPECTS	GENDER NEUTRALITY	GENDER INCLUSIVE
1	Definition	Law applies equally to all genders, treating everyone identically.	Law recognizes gender-based differences to ensure substantive protection and dignity.
2	Purpose of Law	Maintain procedural equality; enforce order.	Achieve substantive equality; protect vulnerable groups; enforce constitutional dignity.
3	Nature	Formal, uniform, rule-centric.	Protective, differentiated, dignity-centric.
4	Applicable Provision	Articles 14, general IPC sections.	Articles 14, 15(3), 21; BNS specific protective provisions
5	Equality Model Applied	Formal equality (sameness).	Substantive equality (differentiated protection).

6	Reasonable Classification Test	Not applied; uniform treatment assumed sufficient.	Explicitly applied: intelligible differentia + rational nexus
7	Legislative Competence	Criminal law under Union/State powers.	Expanded criminal law + social justice mandate under BNS.
8	State Obligation	Passive enforcement duty.	Affirmative duty to protect vulnerable persons; proactive enforcement mandated.
9	Interpretative Approach	Literal / mechanical application.	Purposive, context-sensitive, dignity-oriented interpretation.
10	Judicial Review Standard	Ordinary scrutiny.	Heightened scrutiny: reasonableness & proportionality.
11	Case Law	State of W.B. v. Anwar Ali Sarkar (1952)	NALSA v. Union of India (2014); Navtej Singh Johar v. Union of India (2018); Maneka Gandhi v. Union of India (1978)

12	Maxim	Lex aequalis omnibus - Law is equal for all.	Salus populi suprema lex - Welfare and protection are supreme.
13	Presumption of Constitutionality	Presumed valid as neutral law.	Presumed valid as protective classification, aligned with constitutional objectives.
14	Merits	Simplicity, uniform application, easy enforcement.	Protects vulnerable groups, promotes dignity, aligns with constitutional morality, improves social justice.
15	Demerits	Ignores systemic inequality, may perpetuate disadvantage.	Complexity in implementation, risk of over-classification, requires proactive enforcement judicial role

Figure 1.3

The above figure 1.3 Depicts the Transition from Gender Neutrality toward Gender Inclusivity.

6. Future-Oriented Preventive Justice

To address new types of violence arising from technology, the criminal law framework in India needs preventive mechanisms based on the Constitution which do not presently exist. First, there needs to be an institutionalized, pre-harm risk assessment regime that identifies in advance instances of exploitation, coercive control, and technology-facilitated abuse against vulnerable groups. Second, the establishment of judicially-supervised digital harm anticipation

units that can identify grooming networks, deep fake sexual abuse, and algorithmically-targeted people can occur before victimization takes place. Third, there should be a mandatory dignity impact assessment that evaluates proportionality before criminalizing actions or implementing enforcement technologies, to protect against structural inequality. Fourth, there should be an early warning legislative mechanism that assesses new and emerging crimes on a periodic basis and makes recommendations for adjusting penal sanctions accordingly. Lastly, preventative justice includes restoring dignity to a victim through restorative justice and community-based interventions which focus on rehabilitation and early intervention, rather than building more prison facilities. If all these mechanisms do not exist, dignity-based reforms to the criminal justice system will be theoretical and not apply in practice.

7. Conclusion

This paper contends that while the Bharatiya Nyaya Sanhita, 2023 is an important step towards reshaping the foundations of criminal justice away from colonial penal power and towards constitutional dignity, the BNS extends beyond punishment to protection through centering consent, victimhood and vulnerability in relation to Article 14, 15 and 21. However, reforms without inclusion will only be half of the overall revolution. Gender binary frameworks still prevail in the law and continue to marginalize transgender and non-binary survivors of violence. As noted throughout this paper, **"formal equality maintains structure; however, substantive equality creates justice."** The proposed Gender Justice Index demonstrates that dignity as a constitutional guarantee must be a lived reality within our legal systems. Ultimately, "a law claiming to provide Nyaya should hear all voices it governs." Therefore, until the BNS accepts and embraces inclusivity as the standard for protecting all genders, constitutional justice will continue to be an aspiration instead of a reality.

THEME III: PROCEDURAL INNOVATIONS UNDER THE BHARATIYA NAGARIK SURAKSHA SANHITA (BNSS)

REFORMS FOR SPEEDY TRIAL AND TECHNOLOGICAL INTEGRATION

Ms. M. Charumathi[358]

1. INTRODUCTION:

For several decades, the Indian criminal justice system has struggled with issues such as delay in trials, procedural rigidity, and inadequate infrastructure. These challenges have weakened public confidence and often resulted in prolonged uncertainty for both victims and accused persons. Although the right to a speedy trial has been recognised as part of the broader protection of life and personal liberty, the procedural framework has not always been effective in ensuring its practical realization.The Code of Criminal Procedure, 1973, which once represented a progressive step, gradually became insufficient to meet the demands of a rapidly changing society. Increasing population, the emergence of new categories of offences, and the growing burden on courts and investigative agencies exposed the limitations of a system largely dependent on manual processes.In response to these challenges, the Bharatiya Nagarik Suraksha Sanhita, 2023 has been introduced as part of a broader effort to modernise criminal procedure in India. The legislation seeks to create a more structured and technology-driven system by incorporating digital tools, streamlining processes, and promoting accountability at various stages of the criminal process.This paper explores whether these reforms mark a meaningful transformation or merely represent a formal restructuring of existing procedures. It seeks to analyse how far the BNSS succeeds in addressing delay, improving efficiency, and maintaining fairness within the justice system.

2. OBJECTIVES OF THE STUDY:

This paper seeks to:

a) Critically examine the rationale and necessity for replacing colonial criminal procedure with BNSS, 2023.[359]

[358] First Year –LLM, Tamilnadu Dr.Ambedkar Law University, Chennai Dr Ambedkar Law College, Pattarai Perumputtur, Thiruvallur.

[359] Law Commission of India, 77th Report on Delay and Arrears in Trial Courts (1978).

b) Assess the effectiveness of structural and procedural reforms introduced to ensure speedy trials.[360]

c) Analyse the role of technological integration in modernising criminal justice administration.[361]

d) Evaluate the impact of reforms on victims, accused persons, investigating agencies, and the judiciary and to Identify implementation challenges across jurisdictions, including infrastructure and training deficits.[362]

Law Commission of India, 239th Report on Expeditious Investigation and Trial (2012).

3. BACKGROUND OF LAW:

The CrPC, 1973, replaced the 1898 colonial code but retained much of its adversarial structure.[363]It was designed for a slower, paper-based judicial system and assumed manageable caseloads. Over decades, exponential population growth, rise in complex crimes (cybercrime, organised crime), and administrative inefficiencies rendered the procedural framework sluggish.[364]

Several Law Commission Reports highlighted procedural delay:

a. 14th Law Commission Report (1958) – Reform of Judicial Administration

Chairperson: M.C. Setalvad

Background: In the years immediately following independence, India's judicial system began to experience a growing burden of pending cases along with noticeable structural deficiencies. These challenges led to increasing concern that the administration of justice was becoming inefficient, thereby necessitating a comprehensive evaluation of the system.

Judicial Context Influencing Reform Climate: Even before the later expansion of Article 21 jurisprudence, several High Courts had already highlighted issues relating to delays and limited access to justice. These early judicial observations contributed to creating momentum for a broader, nationwide reassessment of judicial administration.

[360] Law Commission of India, 78th Report on Congestion of Undertrial Prisoners (1979).
[361] Hussainara Khatoon v. State of Bihar, (1980) 1 SCC 81 (speedy trial as fundamental right).
[362] Law Commission of India, 239th Report on Expeditious Investigation and Trial (2012).
[363] Law Commission of India, 14th Report on Reform of Judicial Administration (1958).
[364] State of U.P. v. Deoman Upadhyaya, A.I.R. 1960 S.C. 1125.

Outcome: The Commission emphasized the need to enhance judicial capacity by increasing the number of judges, strengthening court infrastructure, and streamlining procedural laws. It marked one of the earliest acknowledgments that delays in the justice system are rooted in structural issues—concerns that contemporary reforms like the BNSS seek to address through procedural efficiency and modernization.

b. 41st Law Commission Report (1969) – Code of Criminal Procedure

Chairperson: Justice J.L. Kapur

Background: The colonial CrPC, 1898 required modernisation to suit constitutional governance.

Judicial Developments Influencing Reform:

State of Uttar Pradesh v. Deoman Upadhyaya, A.I.R. 1960 S.C. 1125 — Highlighted procedural fairness in criminal trials.[365]

Khatri v. State of Bihar (early legal aid jurisprudence later developed) showed emerging sensitivity to fair trial rights.[366]

Outcome: Led to enactment of CrPC, 1973, introducing fairer procedures, though still pre-digital.

c. 77th Law Commission Report (1978) – Delay and Arrears in Trial Courts

Chairperson: Justice P.B. Gajendragadkar

Background: Rising pendency in trial courts became alarming.

Key Case Influencing Reform:

Maneka Gandhi v. Union of India, (1978) — Established that procedure must be fair and reasonable, indirectly questioning delays and rigid processes.[367]

Outcome: Called for case management, more judges, and procedural efficiency — concerns later directly addressed in BNSS through structured timelines.

d. 78th Law Commission Report (1979) – Congestion of Undertrial Prisoners

Chairperson: Justice P.B. Gajendragadkar

Background: Overcrowded prisons filled with undertrials awaiting trial for years.

[365] A.I.R. 1960 S.C. 1125

[366] Khatri v. State of Bihar, (1961) 1 SCR 627.

[367] Maneka Gandhi v. Union of India, (1978) 1 SCC 248.

Direct Judicial Trigger:

Hussainara Khatoon v. State of Bihar, (1980) - Exposed shocking delay and declared speedy trial a fundamental right.[368]

Outcome: Recommended bail reform and speedy investigation. BNSS's time-bound procedures respond to this humanitarian crisis.

e. 154th Law Commission Report (1996) – CrPC Reform

Chairperson: Justice K. Jayachandra Reddy

Background: Persistent delay and procedural abuse required a full review.

Judicial Influence:

A.R. Antulay v. R.S. Nayak, (1992) - Defined scope of speedy trial at all stages.[369]

Kadra Pahadiya v. State of Bihar, (1981) - Reinforced state's duty to prevent delay.[370]

Outcome: Recommended technological use, witness protection, and procedural simplification — many of which appear in BNSS.

f. 177th Law Commission Report (2001) – Law Relating to Arrest

Chairperson: Justice B.P. Jeevan Reddy

Background: Growing misuse of arrest powers and custodial violence.

Judicial Trigger:

D.K. Basu v. State of West Bengal, (1997) - Laid down arrest guidelines.[371]

Joginder Kumar v. State of U.P., (1994) - Arrest must be justified, not routine.[372]

Outcome: Strengthened procedural safeguards and documentation, now reinforced in BNSS through digital and recorded processes.

g. 221st Law Commission Report (2009) – Need for Speedy Justice

Chairperson: Justice A.R. Lakshmanan

Background: Severe pendency across all levels of judiciary.

Judicial Background:

[368] Hussainara Khatoon v. State of Bihar, (1980) 1 SCC 81

[369] A.R. Antulay v. R.S. Nayak, (1992) 1 SCC 225

[370] Kadra Pahadiya v. State of Bihar, (1981) 3 SCC 671

[371] D.K. Basu v. State of West Bengal, (1997) 1 SCC 416

[372] Joginder Kumar v. State of U.P., (1994) 4 SCC 260

P. Ramachandra Rao v. State of Karnataka, (2002) - Urged legislative solutions for delay.[373]
Common Cause v. Union of India, (1996) - Highlighted systemic delay.[374]
Outcome: Recommended fast-track courts and procedural discipline — now reflected in BNSS through structured timelines and case flow reforms.

h. 239th Law Commission Report (2012) – Expeditious Investigation and Trial

Chairperson: Justice P.V. Reddi
Background: Public concern over prolonged trials in serious and high-profile cases.[375]
Judicial Influence:
Vinod Kumar v. State of Punjab, (2015) 3 SCC 220 — Criticised adjournment culture.[376]
Zahira Habibullah Sheikh v. State of Gujarat, (2004) 4 SCC 158 — Emphasised fair and effective trial management.[377]
Outcome: Recommended time-bound investigation and better trial management, both central to BNSS procedural reforms.

This clearly shows BNSS as the legislative culmination of decades of judicial pressure and expert review.Despite piecemeal amendments, systemic inertia persisted.

4. RESEARCH QUESTIONS:

- Does BNSS effectively operationalise the constitutional mandate of speedy trial?
- How far does technological integration under BNSS modernise criminal procedure?
- Do these reforms balance efficiency with due process and fair trial rights?
- What practical obstacles may undermine implementation?

5. METHODOLOGY:

This study employs doctrinal research methodology, analysing statutory provisions of BNSS and CrPC, Law Commission Reports, parliamentary debates, and judicial precedents relating to procedural fairness and speedy trials.

[373] P. Ramachandra Rao v. State of Karnataka, (2002) 4 SCC 578

[374] Common Cause v. Union of India, (1996) 4 SCC 33

[375] Law Commission of India, 239th Report on Expeditious Investigation and Trial (2012).
[376] Vinod Kumar v. State of Punjab, (2015) 3 SCC 220.

[377] Zahira Habibullah Sheikh v. State of Gujarat, (2004) 4 SCC 158.

6. HYPOTHESIS:

The BNSS introduces progressive procedural and technological reforms that have the potential to reduce delays; however, without adequate infrastructure, training, and safeguards, the intended transformation may remain partially unrealised.

7. NEED FOR STUDY:

India has a very large number of pending criminal cases, and many prisoners are undertrials. Delay in the justice system reduces public trust, affects the rights of both the accused and victims, and weakens the purpose of punishment. Using technology and fixing time limits for procedures may help solve these problems, but their impact needs careful study.

8. HISTORICAL BACKGROUND AND EXISTED LEGAL POSITION UNDER CRPC:

Under CrPC, delay stemmed from:

a) Repeated adjournments
b) Manual documentation
c) Physical presence requirements
d) Inefficient summons service
e) Slow forensic reporting
f) Overburdened police and courts

Judicial decisions such as Hussainara Khatoon v. State of Bihar and A.R. Antulay v. R.S. Nayak recognised speedy trial as a fundamental right. However, courts lacked structural mechanisms to enforce timelines.

9. BNSS CHANGES: PROCEDURAL INNOVATIONS:

BNSS introduces systemic reforms focused on digitisation, time-bound processes, and accountability.

a. POSITION UNDER CRPC:

The CrPC lacked:

- Statutory timelines for investigation/trial completion (except limited custody provisions)
- Mandatory electronic record usage
- Structured digital evidence management
- Efficient summons and warrant systems
- Standardised video conferencing

- Procedure relied heavily on physical paperwork and in-person processes, contributing to delays.

b. CHANGES INTRODUCED IN BNSS:

Time-bound Investigation

BNSS Reform:

BNSS introduces statutory timelines for completing investigations and filing charge sheets.[378]For example, investigation of cognizable offences must be completed within 90 days (or 180 days for serious/complex offences). Delays are now treated as accountable failures of the investigating officer.

BNSS Provisions:

Section 193(1) and Section 187 : Investigation to be completed within prescribed period; judicial extension only under exceptional circumstances.

Sec 173: Electronic FIR registration.

Sec 176: Mandatory forensic investigation for serious crimes.

Sec 187: Police custody and detention limits (linked to default bail).

Sec 193: General obligation for timely investigation, status updates to victims, and further investigation rules.

Digital FIR and e-Documentation

BNSS Reform:

FIRs can now be filed electronically; all investigative and procedural records are digitised. This allows traceability, reduces errors, and eliminates clerical bottlenecks.[379]

BNSS Provisions:

Section 173(1) BNSS. The section formally acknowledges that information pertaining to a cognizable offence may be transmitted using electronic communication methods.

Key Requirement: If given electronically, it must be taken on record upon being signed by the informant within three days.

Unique IDs/Tracking: While Section 173 provides the legal foundation, the use of unique identification numbers and case tracking is made possible through integrated platforms such as

[378] Law Commission of India, 239th Report (2012).

[379] Law Commission of India, 221st Report (2009); BNSS, Section-173.

the Crime and Criminal Tracking Network & Systems (CCTNS) and the Interoperable Criminal Justice System (ICJS). These systems play a key role in supporting the implementation of the e-FIR mechanism.

Zero FIR: Section 173(1) now gives statutory force to Zero FIR, allowing registration at any police station regardless of jurisdiction.

Mandatory Digital Documentation & Investigation Steps

1. The BNSS mandates digital, audio-video, and forensic documentation in several areas:
2. Search and Seizure Records (Video): Section 105 of the BNSS requires that search and seizure operations be recorded using audio-video electronic methods, preferably through mobile devices. It also mandates that seizure lists be prepared and maintained in a digital format.
3. Victim Statements (Electronic): Recording of statements of victims of sexual assault can be done via audio-video electronic means, including mobile phones. Forensic Investigation: Under Section 176(3) BNSS, for offences punishable by 7 years or more, the collection of forensic evidence by a forensic expert at the scene is mandatory.
4. General Electronic Proceedings: Section 530 BNSS. It permits trials, inquiries, and proceedings to be held in electronic mode.
5. In essence, Section 173 governs the digital initiation, while Sections 105, 176, and 530 drive the digital documentation of investigation and proceedings.

Use of Audio-Video Recording

BNSS Reform:

Statements, searches, seizures, and witness interviews can be recorded electronically to improve transparency.

Electronic Summons and Warrants

BNSS Reform:

1. Summons, notices, and warrants can be served electronically via email, SMS, or secure portal, reducing dependency on physical service.[380]

[380] CCTNS Project, National Crime Records Bureau, https://ncrb.gov.in; Zero FIR Concept National Police Mission, https://npmmissions.gov.in

2. BNSS Provisions:

3. Section 63 (Form of Summons - Electronic Option): Explicitly allows summons to be in an encrypted or electronic form, bearing the court's seal image or a digital signature.

4. Section 64 (Service of Summons - Electronic Means): States that summons may be served via electronic communication, such as email, SMS, or WhatsApp, as per rules established by the State Government.

5. Section 70 (Proof of Service & Electronic Logs): Confirms that summons served via electronic communication under sections 64 to 71 are considered duly served. It mandates that a copy of such summons be certified and maintained as proof.

6. Section 71 (Service on Witnesses): Specifically empowers courts to issue summons to witnesses via electronic communication or registered post, deeming delivery based on electronic proof.

7. Section 530 (General Electronic Proceedings): Allows all trials, inquiries, and proceedings to be held in electronic mode.

Video Conferencing for Trials

BNSS Reform:

Courts may conduct trials via video link, including appearance of accused and witnesses. Remote testimony is legally valid.

BNSS Provisions:

1. Section 530 (General Enabling Section): This section is a foundational provision stating that all trials, inquiries, and proceedings, including actions like issuing summons, examining witnesses, and recording evidence, can be conducted in electronic mode using audio-video electronic means.

2. Section 308 (Presence of Accused/Witnesses): While evidence is generally taken in the presence of the accused, this section explicitly permits this to occur via audio-video electronic means from a designated location if the accused's personal attendance is excused.

3. Section 254, 265, 266 (Evidence Recording): These sections allow for the recording of witness testimony and depositions through audio-video means in both sessions and

warrant cases.

4. Charges Framing (VC): Section 251(2) permits the reading and explanation of charges via audio-video means.
5. Confessions/Statements (Magistrate): Magistrates are enabled by Section 183 to record confessions using audio-visual methods.
6. Police Investigation (Witnesses): Section 180 allows police to record witness statements via audio-visual means.
7. Judgments: Section 392 permits the delivery of judgments through audio-video means.
8. Search and Seizure: Section 105 mandates the audio-visual recording of search and seizure processes.

Section 2(1)(a): Provides a broad definition of "audio-video electronic means" to encompass video conferencing, evidence recording, and similar applications.

Section 2(1)(i): Defines "electronic communication".

Forensic Integration

BNSS Reform:

For serious offences, forensic visits are compulsory, and the process of collecting and analysing evidence is incorporated into a digital system.

BNSS Provisions:

1. Mandatory Forensic Visit (Sec 176(3) BNSS): For offences carrying a punishment of seven years or more, the officer in charge of the police station is required to ensure that a forensic expert visits the crime scene to collect evidence.
2. Videography of Evidence Collection: The process of collecting forensic evidence must be videographed on a mobile phone or any other electronic device.
3. Timeline Implementation: States are required to notify and implement this mandatory forensic visit system within five years.
4. Rape Victim Reports (Sec 184(6) BNSS): Medical reports regarding the examination of rape victims must be forwarded to the Investigating Officer within seven days.

5. Digital Submission & Electronic Records
6. General Electronic Proceedings (Sec 530 BNSS): All trials, inquiries, and proceedings—including evidence recording—may be held in electronic mode.
7. Digital Evidence & Communication (Sec 94 BNSS): Courts and police can demand the production of electronic communication devices and data (server logs, emails, smartphones).
8. Digital Reporting (e-Sakshya App): Investigating officers must upload audio/video recordings of search and seizure on the e-Sakshya App.

Case Management and Monitoring

BNSS Reform:

Digital case management platforms track progress,[381] flag delays, and allow judicial supervisors to monitor compliance.

BNSS Provisions:

Section 530 (Electronic Mode of Proceedings): This is the core provision authorizing all trials, inquiries, and proceedings—including examination of witnesses, recording of evidence, and appellate proceedings—to be held in electronic mode via audio-video means.

Section 173 (Electronic FIR): Allows for the registration of FIRs through electronic means (e-FIR), which must be signed within three days.

Section 105 & 185 (Audio-Video Recording): Mandates audio-video recording of search, seizure, and arrests, which are forwarded to magistrates, creating a digital audit trail.

Section 230 (Electronic Documents): Enables the supply of case documents to the accused and victim via electronic means.

Alerts for Deadlines & Higher Authority Notification

1. The BNSS moves from voluntary compliance to mandatory, time-bound procedures, which effectively act as the backbone for automated alerts and supervisory dashboards:
2. Mandatory Timelines (General): Chapters XVII, XIX, and XX set specific deadlines for investigation stages to reduce delays.
3. Forensic Evidence Limits (Sec 176): Mandates forensic investigation for offences

[381] Law Commission of India, 221st Report (2009)

punishable by 7 years or more, requiring digital recording.

4. Victim Information (Sec 193): Police must inform the victim of the investigation's progress within 90 days.
5. Judgment Deadlines (Sec 258): Mandates judgment within 30 days of argument completion (extendable to 45).
6. Supervisory Reporting (Implicit in 176 & 105): Requirements to promptly forward digital recordings of searches and forensic collections to magistrates and superiors ensure automatic data flow for dashboards.
7. While Section 530 provides the legal umbrella for "digital, dashboards, and remote monitoring," the specific mechanisms for alerts are driven by mandatory time-bound provisions (e.g., Sec 173, 176, 258) and mandatory digital recording of procedures (Sec 105, 185, 176).

COMPARISON BETWEEN CRPC AND BNSS:

S.NO	Aspects	CrPC	BNSS
1.	FIR Registration	Mostly physical	Electronic Allowed
2.	Investigation Timelines	Flexible, often delayed	Time-bound framework
3.	Evidence Recording	Written statements	Audio-video recording
4.	Court Appearance	Physical presence	Virtual appearance permitted
5.	Summons Service	Manual	Electronic modes
6.	Case Monitoring	Fragmented	Digital tracking systems

BNSS represents a shift from paper-based adversarial procedure to digitally assisted procedural management.[382]

Practical Impact of the Reform

a. Positive Outcomes
   - Faster initiation of trials
   - Reduction in adjournments
   - Increased transparency in investigation
   - Cost savings in prisoner transport
   - Better witness participation via remote testimony

b. Concerns
   - Digital divide in rural areas
   - Risk of technological failure
   - Data privacy and cybersecurity threats
   - Need for training of police and judiciary

10. CRITICAL ANALYSIS:

The BNSS reflects long-standing recommendations of the Law Commission aimed at improving procedural efficiency. However, the goal of quick justice should not lead to rushed decisions. It is important to maintain safeguards against forced investigations and improper handling of digital evidence.While the use of technology can improve accountability, it also concentrates control over data, which raises concerns about privacy. Additionally, strict procedural timelines may place pressure on investigators, which could affect the quality of evidence collected.[383]

The reform shifts focus from judicial discretion to statutory procedural discipline, marking a structural transformation.[384]

11. SUGGESTIONS:

a. Infrastructure Investment – Digital courts, secure servers, and forensic labs must be expanded.
b. Capacity Building – Regular training for police, prosecutors, and judges.

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[382] K.D. Gaur, Criminal Law in India 112–15 (4th ed. 2020).

[383] Law Commission of India, 154th Report (1996).

[384] Ratanlal & Dhirajlal, The Code of Criminal Procedure 400–05 (25th ed. 2019).

c. Data Protection Framework – Clear safeguards for digital evidence handling.
d. Phased Implementation – Gradual rollout in rural and remote areas.
e. Independent Oversight – Monitoring committees to review compliance with timelines.
f. Witness Support Systems – Digital literacy assistance for vulnerable witnesses.

12. CONCLUSION

The Bharatiya Nagarik Suraksha Sanhita, 2023 can be seen as an important milestone in the evolution of India's criminal justice system. By introducing time-bound procedures and encouraging the use of technology, it attempts to make the process more efficient, transparent, and responsive to contemporary needs. These reforms reflect a broader recognition that traditional methods are no longer sufficient to handle the scale and complexity of modern criminal justice.However, the effectiveness of these changes cannot be judged solely by the provisions of the law. Their real impact will depend on how they are implemented in practice. Adequate infrastructure, proper training, and strong administrative support are essential to ensure that technological tools function as intended. At the same time, it is equally important to safeguard fundamental rights, particularly in areas such as fair trial, privacy, and protection against misuse of power.

In essence, the BNSS presents both an opportunity and a challenge. While it has the potential to significantly improve the functioning of the criminal justice system, its success will depend on maintaining a careful balance between efficiency and justice. A system that is fast but unfair cannot serve its purpose; therefore, continuous evaluation and responsible implementation are necessary to achieve meaningful reform.[385]

[385] K.D. Gaur, Criminal Law in India 160–65 (4th ed. 2020).

PROGRESSIVE REFORMS IN BHARATIYA NAGARIK SURAKSHA SANHITHA 2023; AN EFFORT TO PROMOTE SPEEDY JUSTICE

Mr. R. Gokul Raj, Ms. Amruthasree[386]

1.Introduction

Modern legal system has recognised the rule of timely justice as a foundational feature, which is reiterated from is well known phrase "Justice delayed is justice denied." It is not of recent origin as it can be found in the clause 40 of Magna Carta of 1215, where King John promised "To no one will we sell, to no one will we deny or delay, right or justice."[387] The same could be discovered in the U S Constitution incorporated through its Sixth Amendment in 1791, later paved way for the enactment of Federal Speedy Trial Act of 1974, prescribed for time limitations in federal prosecutions. Across European Union, the on-time justice delivery was made as a mandate that they conferred them it a basic human right standard under Article 6 of the European Convention on Human Rights and required “In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law[388]

Indian legal regime inherited the principle of speedy justice from its colonial legacy, transformed to a fundamental constitutional guarantee. Unfortunately, the statistics were a manifestation of how inadequate was our system in securing the constitutional entitlements to its people. The stringent and rigid Code of Criminal Procedure (CrPC), 1973, subsisted decades, leaving back log of around 5 crores of cases and rendered obsolete in compacting the digital-age complexities. India was in demand of a more equipped legislation that could optimize the judicial proceedings and able to contend with the needs of the day. The enactment of Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, that implemented on July 1, 2024 was a legislative endeavour to feed this urge.

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[387] Robert Whitfield, *Evidence on Consultation on ‘A New Magna Carta?’* (Political and Constitutional Reform Committee, AMC 46, 54676) https://committees.parliament.uk/writtenevidence/54676/html/ accessed on 29 January 2026.

[388] Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) art 6.

This rectificatory legal framework stipulates time bound disposal of cases, necessitates charges to be framed within 60 days, required to pronounce judgements within 45 days completing the trial. To tackle with the physical delays, the Sanhita integrated video conferencing and electronic summons. Procedural innovations: Codifies Zero FIR (Section 173) to bypass jurisdictional barriers and enables trials in absentia (Section 356) for proclaimed offenders, curbing delays from absconding accused. This paper is a doctrinal study to assess the efficacy of BNSS in navigating Indian criminal justice system towards a victim centred, agile and expeditious machinery.

2.Implementation of Zero FIR to prevent delay in filing.

Zero FIR is a significant reform in Indian criminal justice system that allows any police station to register an FIR for a cognizable offence, regardless of jurisdiction, introduced on the recommendation of the Justice Verma Committee after the 2012 Nirbhaya case.[389] It ensures prompt action without delay due to territorial boundaries. The concept of Zero FIR aimed at ensuring on time registration of crimes irrespective of jurisdictional boundaries is a significant feature of criminal procedure in India. It was also introduced in various precedents, in *Lalita Kumari v. state of Uttar Pradesh*[390], the Supreme Court held that "the police have a mandatory duty to register an FIR when the information given discloses a cognizable offence." Section 173(1) of the BNSS authorize information regarding a cognizable offence can be oral or through electronic means. A remarkable evolution of BNSS is that if the information is given electronically, the informant must sign the recorded information within three days. This timeline for obtaining the informant's signature is a new addition that is not specified in the Code of Criminal Procedure. But the term zero FIR is not expressly provided in the BNSS instead of the term Irrespective of jurisdiction is used in the law.

As per provisions of 173(1) of BNSS

"Every information relating to the commission of a cognizable offence, irrespective of the area where the offence is committed may be given orally or by electronic communication and if given to an officer in charge of a police station—

[389] R.K. Raghavan (2016), "Victim-Centric Policing and the Role of Zero FIR", Journal of the National Human Rights Commission, Vol. 15, pp. 89–95
[390] *Lalita Kumari v. state of Uttar Pradesh*, AIR 2014 SC 187 (SC)

(i) orally, it shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it;

(ii) by electronic communication, it shall be taken on record by him on being signed within three days by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf."[391]

2.1 Punishment for Non-Compliance

Police officers failing to register a Zero FIR for cognizable offences may subjected to penalties under **Section 199 (c) BNS** (Public servant disobeying direction under law).[392]

It provides that "Whoever, being a public servant, fails to record any information given to him under sub-section (1) of section **173 of the Bharatiya Nagarik Suraksha Sanhita, 2023**[393] in relation to cognizable offence shall be punished with rigorous imprisonment for a term which shall not be less than six months but which may extend to two years, and shall also be liable to fine".

3.Filing of Daily Diary report to Magistrates.

Section 174 of BNSS mandates the officer in charge to forward Daily Diary Reports of information received relating to non-cognizable cases to Magistrate fort-nightly ie, once in every two week or once in 14 days.[394] This is a novel incorporation made to the criminal procedure, which cannot be seen in the prior legislation.

4.Preliminary Inquiry

One material change brought in section 173(3) of the Bharatiya Nagarik Suraksha Sanhita (BNSS), which had evolved from the Supreme Court's ruling in *Lalita Kumari vs. State of Uttar Pradesh*.[395] This provision introduces substantial Police discretion for cognizable offences punishable by imprisonment from three to seven years upon receiving information, the officer in charge can conduct a preliminary inquiry within 14 days to ascertain whether

[391] The Bharatiya Nagarik Suraksha Sanhita 2023 Sec 173(1)
[392] The Bharatiya Nyaya sanhitha 2023 sec 199(c)
[393] The Bharatiya Nyaya sanhitha 2023 sec 199(c)
[394] The Bharatiya Nyaya Sanhitha 2023 Sec. 174
[395] *Lalita Kumari v. state of Uttar Pradesh*, AIR 2014 SC 187 (SC)

there is a prima facie case with prior approval from a Deputy Superintendent of Police or higher or proceed directly to investigation if it is evident that there exists a prima facie case. The rationale is to boost efficiency in the criminal justice system by filtering frivolous complaints, easing the burden on police and courts, and focusing resources on meritorious cases. However, this directly contradicts *Lalita Kumari*, which mandates immediate FIR registration for cognizable offences, allowing preliminary inquiries only in limited circumstances and requiring completion within seven days.[396]

This made an action on three areas prolonged inquiry, timelines that delay FIRs up to 14 days, conflicting seven-day versus 14-day limits causing procedural confusion; and expanded police discretion that undermines judicial oversight, potentially dismissing legitimate complaints and denying justice to victims. To resolve this, judicial clarification is essential to define sec 173(3)'s scope in line with the Court's mandate, alongside stronger oversight mechanisms to ensure transparent and judicious police discretion.

5.Period of detention when investigation not completed in 24 hours

Section 187(3) of the BNSS [397]allows for the extension of police custody beyond the initial fifteen days up to the entire detention period of sixty or ninety days. This prolonged detention period is a marked divergence from the CrPC, that may provide room for possibilities of custodial torture, abuse, and fabricated evidences. This modern criminal procedure code provision goes in par with the recent Supreme Court ruling in *V. Senthil Balaji vs. State*[398] in 2023. In this case, the Court found that "The maximum period of 15 days of police custody is meant to be applied to the entire period of investigation 60 or 90 days, as a whole." Additionally, the Court in the '*Senthil Balaji*' case called for a larger bench to reconsider the verdict in the '*Anupam J. Kulkarni'* case[399]

6.Medical report shall forward time bound

[396]Ministry of Home Affairs, *Standard Operating Procedure (SOP) Zero FIR & e-FIR,(BPR&D) 2023*<https://bprd.nic.in/uploads/pdf/SOP_on_Zero_FIR%20&%20eFIR%20-%20NCL%202023.pdf>accessed 25 january 2026
[397] The Bharatiya Nagarik Suraksha sanhitha 187(3)
[398] V Senthil Balaji v The Deputy Director, Directorate of Enforcement [2024] 10 S.C.R. 393; 2024 INSC 739 (Supreme Court of India, 26 September 2024).
[399] *Central Bureau of Investigation v Anupam J Kulkarni* (1992) 3 SCC 141.

A remarkable change was made in case of medical examination of rape victims that the BNSS prescribes to forward the medical report of the rape victim by the medical practioner who examined the victim to the investigating officer within seven days, whereas CrPC provisions was just having the word "without delay" [400]

7.Report on completion on investigation.

The police officer on completion of investigation, if the investigation in relation of offences under 64,65,66,67,68,70,71 of Bharatiya Nyaya Sanhita 2023 0r under section 4,6,8 or 10 of protection of children from sexual offences Act, 2012 shall be completed within 2 months from the date on which the information was recorded by the officer in charge of the police station.[401] Previous position in the criminal law was 3 months[402]

Moeover the investigation continuing after the trial with the permission of the court should be completed within a period of ninety days.[403]

8.Prescribed time limit to supply copy to the accused

Previously, there was no prescribed time limit for supplying a copy of the report to the accused. The Bharatiya Nagarik Suraksha Sanhita, however, mandates that this be done within a period not exceeding fourteen days from the date of the accused's production or appearance.[404]

9. Committal to the Sessions Court

Under Section 232 of the BNSS it specifically says when a case seems to be triable by the court of sessions exclusively, has to be committed to the concerned sessions court by the magistrate within 90 days, can be extended to 180 days by recording reasons in writing.[405]

10.Addition of offence in Joint Charges.

Section 242 of the BNSS introduces a slight change from section 219 of the CrPC by substituting 5 offences instead of 4 offences within the time span of twelve months. [406]

[400] The Bharatiya Nagarik Suraksha Sanhita 2023 Sec 184(6)
[401] Code of Criminal Procedure 1973 sec 173
[402] The Bharatiya Nagarik Suraksha Sanhita 2023 Sec 193(2)
[403] The Bharatiya Nagarik Suraksha Sanhita 2023 Sec 193(9) proviso
[404] The Bharatiya Nagarik Suraksha Sanhita 2023 Sec 230
[405] The Bharatiya Nagarik Suraksha Sanhita 2023 Sec 232
[406] The Bharatiya Nagarik Suraksha Sanhita 2023 Sec 242

Clubbing of more offences in the same transaction can prevent the delay in the trial proceedings of enormous similar offences committed in the same transaction by the same accused.

The principal authority for the "same transaction" framework, supplying the tests (not cumulative) commonly used: unity of purpose and design, proximity of time and place, and continuity of action.[407]

11.Discharge

The doctrine of discharge rests on the foundational principle that no individual shall be compelled to endure a criminal trial without sufficient grounds. It also enshrined in the maxim "audi alterum partum" which means to "hear the other side". This safeguards the accused persons from unwarranted harassment, conserves judicial resources, and ensures that only cases exhibiting a prima facie basis proceed to trial. Under the Code of Criminal Procedure, 1973 (CrPC), no limitation period governs the filing of discharge applications. In contrast, the Bharatiya Nagarik Suraksha Sanhita, 2023 provides statutory timelines for discharge. Especially under Section 262(1)[408] of the BNSS mandates that, in warrant cases instituted upon a police report, discharge applications must be filed within 60 days from the date of supply of copies or documents under Section 230.[409] Likewise, Section 250 of the BNSS requires discharge applications in sessions cases to be filed within 60 days from the date of committal. This time barriers are not applicable to discharge applications in warrant cases instituted from private complaints.

The Hon'ble High Court of Kerala has clarified that "the time limit of 60 days to file discharge petition under section 250 of the Bharatiya Nagarik Suraksha Sanhita is not mandatory, it is directory in nature. The Court further held that, this 60 days period has to be calculated from the date on which copies of documents are supplied to the accused".[410]

No commitment procedure has been prescribed in the POCSO Act for the cases triable by the Special Court, the date of appearance before the Special Court or the date on which accused was brought before such court for the first time after cognizance of the offence is taken under

[407] *State of Andhra Pradesh v Cheemalapati Ganeswara Rao & Anr (Supreme Court of India, Criminal Appeal No. 39 of 1961, 23 April 1963) 1963 AIR 1850, 1964 SCR (3) 297.*
[408] The Bharatiya Nagarik Suraksha Sanhita 2023 263(1)
[409] The Bharatiya Nagarik Suraksha Sanhita 2023 230
[410] *Sanith v State of Kerala* (Kerala High Court, 2024) 2024 LiveLaw (Ker) 585

Section 33(1) of the POCSO Act, 2012 such date shall be treated as the date of commitment for the purpose of Section 250(1) of the BNSS.[411]

12.Time bound framing of charges in trials.

The Bharatiya Nagarik Suraksha Sanhita made a remarkable change from CrpC to BNSS is the time bound framing of charges in various trials. It expressly provided that the framing of charges within 60 days from the date of first hearing charge.[412] It shall be strictly followed in the trial of warrant cases before the court of sessions. In the cases appearing before magistrates, the charges must be framed within 60 days from the date of first hearing on charge.[413]

13.Limiting adjournment

The legal framework governing timelines and adjournments in criminal trials has undergone significant evolution. In *Raj Deo Sharma v. State of Bihar*, (1998) 7 SCC 507, the Supreme Court initially mandated specific time limits for various categories of offences to expedite trials. This directive was however overruled by a Constitution Bench in *P. Ramachandra Rao v. State of Karnataka*, AIR 2002 SC 1856, which held that although the accused possesses a fundamental right to a speedy trial, courts cannot enforce rigid timeframes, given the fact-specific nature and complexities of individual cases. This position was reaffirmed in *Fazal v. State of Uttar Pradesh*, (2012) 5 SCC 752, wherein the Court emphasized that while the right to expeditious proceedings is enshrined, prescribing uniform time limits for their conclusion remains impracticable. Accordingly, the prevailing jurisprudence balances the constitutional imperative of speedy justice with procedural flexibility, permitting adjournments solely for compelling reasons rather than as routine practice.[414]

The Bharatiya Nagarik Suraksha Sanhita introduces a significant amendment regarding adjournments in criminal trials. Unlike Section 309 of the CrPC, which did not specify a maximum number of adjournments,[415] where as BNSS provision Section 346 expressly set a limit on the number of adjournments that can be granted when circumstances are beyond a party's control. The court may grant not more than two adjournments to a party if the

[411] *Narottam Prusty v State of Odisha & Anr* (Odisha High Court, 2025) 2025 LiveLaw (Ori) 123.
[412] The Bharatiya Nagarik Suraksha Sanhita 2023 Sec 251(1)b
[413] The Bharatiya Nagarik Suraksha Sanhita 2023 Sec 263(1)
[414] Dr. Gopal Arora, *Proceedings on Hold A Comparative Look at CrPC and BNSS Provision*(Chandigarh Judicial Academy,2024)<https://cja.gov.in/attachment/638869715344663595_.pdf>accessed 28 January 2026
[415] Code of Criminal Procedure 1973 sec 309

circumstances necessitating the adjournment are genuinely beyond that party's control. This is a strict cap, intended to prevent unnecessary delays in proceedings.[416]

14.Implementation of Inabsentia trial

One of the remarkable changes in the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, establishes trial-in absentia under Sections 355[417] and 356,[418] which rewrites the principle that comprehensive trials, convictions, and punishment are to be conducted within the presence of the accused. This is one of the major deviation took from the established rules of Criminal Procedure Code (CrPC), 1973, which allowed evidence recording without the presence of the accused. It seeks to minimize delays, prevent intentional evasion of justice and promotes speedy justice. The term "Trial in Absentia" is of Latin origin and refers to a criminal trial held in the absence of the accused. An accused individual is given the opportunity to defend themselves against the evidence against them, ensuring that the legal procedure maintains the fundamental right to a defence. When an individual intentionally abstains, absconds, or voluntarily waives their right to be present, they effectively forfeit their right to personal representation during the trial.

The Indian Supreme Court in the case of Hussain v. Union of India[419], noted that the trials were being delayed due to the absconding of the accused and recommended suitable amendments to the CrPC to reduce the delay same during such trials.

In order to strike a balance between time-bound disposal of the case and following the principles of fair trial, BNSS provides for certain safeguards that trial courts need to follow before commencing the trial in absentia. Under the BNSS, the trial court can only undertake a trial in absentia once an accused person has been declared as a proclaimed offender.[420] Secondly, the court has to ensure that two consecutive warrants have been issued within the period of 30 days.[421] Thirdly, the court cannot commence the trial unless a period of 90 days has lapsed from the date of the framing of the charge.[422] Fourthly, the court must inform a relative or friend of an accused about the commencement of the trial.[423] Fifthly, the court also

[416] The Bharatiya Nagarik Suraksha Sanhita 2023 Sec 346
[417] The Bharatiya Nagarik Suraksha Sanhita 2023 Sec 355
[418] The Bharatiya Nagarik Suraksha Sanhita 2023 Sec 356
[419] *Hussain v Union of India* (2017) 5 SCC 702 (SC)
[420] The Bharatiya Nagarik Suraksha Sanhita 2023 Sec 356 (1)
[421] The Bharatiya Nagarik Suraksha Sanhita 2023 Sec 356(2) (i)
[422] *id*
[423] The Bharatiya Nagarik Suraksha Sanhita 2023 Sec 356 (2) (iii)

has to publish a notice in a national or local daily newspaper circulating in the place of the accused's last known address, and informing them that the trial will commence within 30 days if they fail to appear.[424] And lastly, the said notice needs to be affixed on some conspicuous part of the house and displayed in the police station of the district of the accused's last known place of residence.[425]

Further, where the court has examined any witnesses for prosecution in relation to a case, such statement can be given as evidence against the proclaimed offender.[426] In case the proclaimed offender is arrested and produced or appears before the court during such trial, the court may allow said offender to examine any evidence that may have been taken in their absence.[427] However, if an accused disappears during a trial, their voluntary absence shall not derail the trial, including the judgment, even if they are arrested and produced or appear at the conclusion of such trial. The BNSS also provides that no appeal shall lie against the judgment in such trials, unless the proclaimed offender presents themselves before the court of appeal.[428] Furthermore, no appeal against conviction shall lie after the expiry of three years from the date of the judgment.[429] The BNSS also modernises the approach to such trials and provides that the deposition and examination of the witness may be recorded by audio video electronic means, as far as practicable, and that such recording shall be preserved.[430]

15.Time bound pronouncement of judgement

The implementation of strict compliance of pronouncement was not included in the Code of Criminal Procedure. The presiding officers of criminal courts having original jurisdiction is under the duty to pronounce judgement in every trial in open court immediately after the termination of trial or at some subsequent time not later than 45 days of notice shall be given to the parties or their advocates."[431] Moreover that the copy of the judgement pronounced shall be uploaded on the court's portal within 7 days from the date of judgement as far as practicable.[432]

[424] The Bharatiya Nagarik Suraksha Sanhita 2023 Sec 356 (2) (iv)
[425] *id*
[426] The Bharatiya Nagarik Suraksha Sanhita 2023 Sec 356 (4)
[427] The Bharatiya Nagarik Suraksha Sanhita 2023 Sec 356 (4) proviso
[428] The Bharatiya Nagarik Suraksha Sanhita 2023 Sec 356 (7)
[429] The Bharatiya Nagarik Suraksha Sanhita 2023 Sec 356 (7) proviso
[430] The Bharatiya Nagarik Suraksha Sanhita 2023 Sec 356 (5)
[431] The Bharatiya Nagarik Suraksha Sanhita 2023 Sec 392(1)
[432] The Bharatiya Nagarik Suraksha Sanhita 2023 Proviso of sec 392

Conclusion

Although Article 21 of the Indian Constitution and the Directive Principles of State Policy recognise the right to speedy justice as a fundamental human right, the justice delivery system has historically fallen short of effectively ensuring this guarantee. The Bharatiya Nagarik Suraksha Sanhita (BNSS) represents a legislative attempt to address and rectify these systemic shortcomings. BNSS cannot claim complete novelty, however, it laid down certain significant and long-demanded reforms notably the provision for Zero FIR, in absentia trials, time mandates for framing charges, adjournments, and pronouncement of final decision. Inclusion of technological interventions, mainly e-summons and video conferencing would aid in alleviating the pendency of cases supplemented by victim's right protection.

Conversely, it is to be admitted that there are seats for grave human right violations in this reformative framework that could undermine these gains. Section 187(3) empowers extended police custody beyond 15 days up to 60/90 days intensifies risk of third-degree torture, humiliations, abuse, and self-incrimination. Procedural ambiguities related to the provisions of electronic FIR as per section 173 lacking verification guidelines and discrepancies in provisions for 14 days preliminary inquiry and settled guidelines issued by Honourable Supreme Court in Lalita Kumari Case, granting uninterrupted discretionary power to police in registering cases. Feeble witness protection measures renders vulnerable testimonies open to influences, raising serious concerns on integrity of criminal trials. Implementation of this novel procedural framework in nationwide amid institutional and systemic deficiencies requires clear and constant judicial supervision to conciliate efficiency with fairness, making the reforms true than mere promise.

PROCEDURAL REFORM AND SURVIVOR PROTECTION: ANALYSING SECTION 184 BNSS IN SEXUAL OFFENCE CASES

Ms. Hemavarshni S,[433]

INTRODUCTION:

Sexual violence constitutes one of the gravest crimes within the criminal justice system. It is not merely an offence against the body but a profound assault on dignity, autonomy and very personhood of the victim. In Indian legal framework, rape[434] is one such heinous offences, attracting harsh penal consequences and warranting strict legal scrutiny and sensitive handling throughout the criminal justice process. Given the nature of the offence, rape cases usually occur in private, with no eyewitnesses. As a result, the statements of the accused and the victim often stand in direct contradiction, each advancing their own version of events. In such circumstances, reflecting the "*Principle of Exchange*[435]" enunciated by Edmond Locard, medical evidence assumes heightened significance in determining the veracity of the allegations.

However, legal enactments dealing with sexual offences must strike a careful balance between the need for efficient investigation and the imperative to protect the rights and well-being of 'crime victims'[436]. This balance becomes especially significant at the stage of medical examination, where the pursuit of evidence often intersects with the victims' rights to dignity, privacy, and informed consent. While medical examination serves an important evidentiary purpose, it also carries a humanitarian dimension, aimed at providing care and support to the victim. Justice Krishna Iyer once observed that "*the worth of a civilization is measured by how it treats its weakest members*[437]." This observation holds relevance in the context of sexual offence examination, where victims frequently find themselves navigating a legal process that

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434 Bharatiya Nyaya Sanhita, 2023, § 63, No. 45, Acts of Parliament, 2023 (India).

435 B.R. Sharma, *Forensic Science in Criminal Investigation and Trials* 13 (6th ed. 2020) (Reprint 2023).

436 G.A. Res. 40/34, annex, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, art. 1 (Nov. 29, 1985).

[437] *M.H. Hoskot v. State of Maharashtra*, (1978) 3 S.C.C. 544 (India) (Justice V. R. Krishna Iyer often cited this idea in his judgments and speeches while discussing social justice, human rights, and protection of the poor and marginalized. Gandhi expressed similar thoughts in different forms, emphasizing that the moral strength of a society lies in how it treats its most vulnerable people).

can be as traumatizing as the crime itself. The medical examination of rape survivors, while essential for criminal prosecution, must therefore be conducted in a manner that upholds dignity, autonomy, and compassion.

Section 164A of the Code of Criminal Procedure, 1973 governed the medical examination of rape victims. The provision largely emphasized on procedural safeguards - prompt medical examination and proper documentation of injuries and forensic evidence. Hardly did it cast an eye on the underlying concerns say victims' autonomy, emotional well- being, gender sensitive examination protocols which frequently resulted in re-traumatization of survivors during the examination process.

The Code of Criminal Procedure, 1973[438] was superseded in 2023 by the Bharatiya Nagarik Suraksha Sanhita[439] as part of a comprehensive overhaul of India's criminal law framework. **Section 184 of the BNSS** now governs the medical examination of rape victims, effectively replacing Section 164A CrPC. The introduction of Section 184 BNSS reflects a legislative attempt to modernize criminal procedure by introducing clearer timelines, streamlining investigative processes, and strengthening coordination between law enforcement and medical authorities. However, the extent to which these changes translate into enhanced protection of victim rights remains a subject of critical examination.

Thus, this research paper seeks to examine whether the transition represents a substantive improvement in safeguarding victim rights during medical examination. Employing case study based analysis, under the ambit of consent requirements, privacy protections and gender sensitivity, the study aims to assess whether the latter provision provides better victim-centric safeguards as to the former or it is merely procedural repacking.

EVOLUTION OF VICTIM RIGHTS:

The development of criminal law mirrors society's evolving understanding of justice and human dignity. Historically, legal systems such as Roman law and Anglo-Saxon law treated crime as a private wrong and emphasized restitution to victims. But with the emergence of centralized states and the idea of "King's Peace" (pax regis), the state became responsible for prosecuting crime. This transformation gradually side- lined victims, as crimes were viewed as

[438] Code of Criminal Procedure, 1973, No. 2, Acts of Parliament, 1974 (India).
[439] Bharatiya Nagarik Suraksha Sanhita, 2023, No. 46, Acts of Parliament, 2023 (India).

breaches against state authority rather than personal harm in the criminal justice process[440]. At instances, this framework through long procedures, insensitive questioning intensified the victim's sufferings. Such additional harm caused by the justice process itself is known as secondary victimization[441], where the system unintentionally re-traumatizes the victim.

The mid-twentieth century marked a turning point. The development of victimology as an academic discipline in the 1940s and 1950s, led by scholars like **Benjamin Mendelsohn and Hans von Hentig**[442], brought systematic attention to victims' experiences. Although early victimology sometimes focused on controversial notions like victim precipitation, it nonetheless reintroduced the victim into criminal law discourse.

A universally accepted framework for victim rights eventually emerged in 1985 with the adoption of the **"United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power[443],"** which elaborated on definitions of victims and their rights to access to justice, restitution, compensation, and assistance. It fostered member nations, like as India, to reconsider their criminal justice systems and work toward a more compassionate, inclusive, and "victim-centric" approach[444].

As stated by Ronald Dworkin, "*Rights are best understood as protections of human dignity*", the victim-centric model anchored to **International Human Rights law**, particularly the **Universal Declaration of Human Rights,1948**[445], prioritizes the rights, needs, dignity, and safety of victims to be the cornerstone of criminal justice system throughout the legal process—from reporting to post-conviction stages. The survivors must be fully informed at every stage of medical examination, allowed to give consent or refuse before actions are taken.

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440 Ashi Bansal & Manisha Matolia, Victim-Centric Governance in the Criminal Justice System: Policy and Practice Analysis with Special Reference to India, 2 ADV. CONSUMER RSCH. 2128 (2025), https://acr-journal.com/article/victim-centric-governance-in-the-criminal-justice-system-policy-and-practice-analysis-with-special-reference-to-india-1922/ (last visited Jan. 30, 2026).

441 Prof. N. V. Paranjape, *Criminology, Penology,Victimology* 774 -75(7th ed. 2017).

442 Shanell Sanchez, *Victims and Victim Typologies*, *in* SOU-CCJ230 INTRODUCTION TO THE AMERICAN CRIMINAL JUSTICE SYSTEM (2019), https://openoregon.pressbooks.pub/ccj230/chapter/1-14-victims-in-the-cj-system/ (last visited Mar. 16, 2026).

443 G.A. Res. 40/34, annex, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (Nov. 29, 1985).

444 Bansal & Matolia, *supra* note [8], at [2128].

445 G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948).

One of the main tenets of victims' rights is to minimize the possibility of secondary victimization by treating victims with empathy, dignity, and sensitivity. This is achieved by recognizing the victim as a legitimate and central stakeholder in the justice process rather than just a witness or a passive recipient of state action.

The days of using retributive and preventive ideas of criminal justice to deal with crime and criminals are long gone. Restorative justice that involves the victim, the offender, and the community at large, emerged in recent decades as a result of rehabilitative measures to guarantee a balance between the victim's rights and the perpetrator's punishment[446]. Comparatively, jurisdictions like the United States have enacted laws such as the Crime Victims' Rights Act (2004)[447], which guarantees fair treatment and respect for victims' dignity and privacy. Similarly, Canada's Victims' Bill of Rights (2015)[448] emphasizes courtesy, compassion, and respect for dignity.

In a nutshell, the medical examination of victims which has a momentous impact must tick the boxes of autonomy, privacy and consent in the preview of a victim-oriented landscape. Further to enhance comfort and preserve dignity, the examination should whenever possible, be conducted by a female medical practitioner.

LITERATURE REVIEW:

India's constitutional framework, particularly under **Article 21**, strongly upholding dignity, privacy and bodily integrity of the individuals[449] is germane to the way the victims are treated. The following literature forms the theoretical foundation for this study, exploring the gravity of incorporating such principles enshrined under Article 21 of the Indian Constitution in provisions relating to medical examination of rape victims in order to take forward the victim-centric approach.

Medical examination plays an important role in corroborating the victim's statement and aiding the criminal justice process. The Supreme Court's 2000[450] ruling, which declared that a medical examination of rape victims constituted a "*medico-legal emergency*," acknowledged

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446 Paranjape, *supra* note [9], at [777].

[447] Crime Victims' Rights Act, 18 U.S.C. § 3771 (2004).
[448] Canadian Victims Bill of Rights, S.C. 2015, c 13, s 2 (Can.).
449 *Francis Coralie Mullin v. Union Territory of Delhi*, AIR 1981 SC 746 (India).

[450] *State of Karnataka v. Manjanna*, (2000) 6 S.C.C. 188 (India).

its paramount significance and established the right of all victims and the obligation of all hospitals to do so prior to filing a lawsuit.

A survivor may have a medical check-up in one of three situations[451]:

1. When the victim seeks care for the aftereffects of the assault at a hospital or clinic.
2. Following a police complaint, when a police requisition is issued; or
3. Following a court order or directive.

Obtaining informed consent is crucial in all of the aforementioned situations in order to gather samples for clinical and forensic analysis, therapy, and police notification—all of which provide victims a sense of agency. Prior to the procedure, the medical professional is duty bound to explain to the patient the rationale behind each procedure, the processes required, and the associated risks in plain, intelligible language. At every stage of the examination, the survivor's agreement must be obtained. If the survivor does not agree, the medical professional must refrain from taking any action. Gender sensitivity is another precaution, and it is recommended that a female physician perform the examination; if this is not possible, a male physician may perform the examination with the victim's permission[452].

The United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985 and the International Covenant on Economic, Social, and Cultural Right, 1966 provide that "*victims of rape are legal resource that does not re-traumatize them or violate their physical or mental integrity and dignity. They are also entitled for medical procedures conducted in a manner that respects their right to consent. Medical procedure should not be carried out in a manner that constitutes cruel, inhuman, or degrading treatment and health of the raped woman should be of paramount consideration while dealing with gender-based violence. The state is under a duty to make such services available to*

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[451] Ministry of Health and Family Welfare, Gov't of India, *Guidelines & Protocols: Medico-Legal Care for Survivors/Victims of Sexual Violence* 23 (2014) https://health.mizoram.gov.in/uploads/attachments/2023/07/28651cad3c4af99356210b9dcd0907b2/pages-189-guidelines-protocols-sexual-harassment.pdf.

[452] Id. at 20.

survivors of sexual violence. There should be no arbitrary or unlawful interference with their privacy[453]."

Following the **Nirbhaya case**[454], in 2014 the 'Ministry of Health and Family Welfare' gave certain protocols and guidelines for medicolegal aid for the victims of sexual offence - **"The National Guidelines for Examinations of Sexual Assault Victims**". Except in life-threatening situations that comply with Section 92 of the IPC, they require that the victim be informed of the nature and process of the examination prior to obtaining consent[455] (now Section 30 BNS, 2023). Further, the two finger test, also known as 'per vaginal examination', allows the medical practitioner to insert two fingers into the victim's vagina to test the laxity in vaginal muscles and check the condition of hymen. In the case of ***Lillu alias Rajesh & Another v. State of Haryana*[456]*,*** the Supreme Court affirmed the rights of rape victims and ruled that the two-finger test used to determine a woman's virginity violates her right to privacy, bodily and mental integrity, and dignity. Even if the report is positive in this situation, it cannot *ipso facto* lead to a presumption of assent. This test was tagged unscientific, violating human rights. Additionally, the Ministry of Health and Family Welfare's 2014 guidelines denounced this test as well. This can be clearly seen as step to firmly root medical jurisprudence in constitutional morality.

Institutional reports have also had a major impact on the modification of sexual offense laws in India. In the wake of the 2012 Delhi gang rape, the **Justice Verma Committee Report (2013)** highlighted the necessity of victim-centric procedures, gender-sensitive medical examinations, and the abolition of dehumanizing practices like the two-finger test. In its **172nd Report on Review of Rape Laws (2000),** the Law Commission of India has already emphasized the importance of preserving survivors' privacy and dignity throughout the course of an inquiry and prosecution.

Judicial pronouncements, to say ***Sakshi v. Union of India***[457] have further reinforced this framework. The necessity of specialized training programs for medical professionals was

453 Paranjape, *supra* note [9], at [787].

[454] *Mukesh v. State for NCT of Delhi*, (2017) 6 S.C.C. 1 (India).
[455] Sneha Mukherjee, *Medical Examination of Rape Victims in India*, 2 INT'L J. LEGAL RES. & ANAL. 23 (2026), https://www.ijlra.com/details/medicial-examination-of-rape-victims-in-india-by-sneha-mukherjee- (last visited Jan. 31, 2026).
[456] (2013) 14 S.C.C. 643 (India).
457(2004) 5 S.C.C. 518 (India).

emphasized in order to make sure that they possess sufficient expertise and sense of empathy to manage such delicate situations.

Thus, it can be inferred from the existing literature that the role of medical examination in situations of sexual offenses goes beyond simply gathering forensic evidence; it also includes safeguarding the victim's rights, dignity, and physical autonomy. Such examinations must be carried out with the victim's informed consensus and in a way that reduces the possibility of additional psychological or physical harm, according to legal requirements. Therefore, a victim-centric strategy is necessary to guarantee that the victim's basic rights are upheld and protected throughout the investigation and judicial processes, and that the legal process does not worsen their misery.

In light of these considerations, the present study seeks to examine whether Section 184 of the Bharatiya Nagarik Suraksha Sanhita (BNSS) represents a substantive advancement in safeguarding victim rights when compared to Section 164A of the Code of Criminal Procedure (CrPC), or whether it merely constitutes a restructured continuation of the existing procedural framework.

RESEARCH METHODOLOGY:

This is a doctrinal study which employs a case study methodology combined with a comparative analysis to examine the concept of victims' rights through the lenses of privacy, consent, dignity, and autonomy, and to determine whether the BNSS framework better safeguards the rights of rape victims in the context of medical examinations compared to the CrPC. It primarily analyses the statutory provisions through a comparative lens to evaluate the extent to which each provision safeguards victims' rights. The research relies on primary sources like statutes, judicial decisions, policy guidelines issued by the **Ministry of Health and Family Welfare**, particularly the **2014 National Guidelines for Medico-Legal Care for Survivors of Sexual Violence**. In addition, relevant international instruments, including the **United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985** and the **International Covenant on Economic Social and Cultural Rights, 1966** are considered to contextualize the victim-centric approach within broader human rights standards. Secondary sources such as academic writings, law commission reports, and victimology scholarship are also consulted to support the analysis. The scope of the study is confined to the legal and procedural dimensions of medical examination during investigation,

with particular focus on adult survivors, while acknowledging broader inclusivity concerns within the existing statutory framework.

OBJECTIVES OF THE STUDY:

1. Analyze how the principles of dignity, autonomy, privacy and consent are recognized and implemented in medico-legal procedures.
2. Compare the safeguards provided under Section 164A CrPC and Section 184 BNSS.
3. Identify the gaps and suggest reforms to strengthen the trauma-informed, victim-centric medico-legal system that aligns with the constitutional values and human rights standards.

COMPARATIVE ANALYSIS OF SECTION 164A CrPC AND SECTION 184 BNSS:

In India, a country with a vast and convoluted criminal justice system, the procedural aspect of medical examination of rape victims during the investigation stage is outlined by statutory provisions such as Section 164A and Section 184 of the Code of Civil Procedure (CrPC), 1973 and Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 respectively. According to Section 164A CrPC, 1973, a registered medical professional working in a government or local authority hospital, or any other registered medical professional in their absence, shall perform the rape victim's medical examination[458]. Further, the victim should be examined without any delay, preferably within twenty-four hours of learning about the commission of offense. Section 184 BNSS is parallel in this regard[459]. The medical practitioner under both the sections is required to write a thorough report that includes specifics like the victim's age, mental state, and any injuries witnessed. Since it offers unbiased proof that can support the victim's story, this report is essential for the investigation and prosecution of rape cases.

Consent lies at the heart of the the legislative structure that controls rape victims' medical examinations. Both the Section 164A CrPC and Section 184 BNSS address the requirement of informed consent to undertake the medical examination. Further Section 184(7) BNSS mirroring Section 164A(7) CrPC upholds consent as an absolute prerequisite - "*Nothing in this section shall be constructed as rendering lawful any examination without the consent of the*

458 Code of Criminal Procedure, 1973, § 164A (1) (India).

459 Bharatiya Nagarik Suraksha Sanhita, 2023, § 184(1) (India).

women or of any person competent to give such consent on her behalf." By stipulating consent as fundamental, it empowers autonomy. No authority—whether police, magistrate, or court can compel a woman to undergo a medical examination against her will[20]. These provisions underscore mandatory consent prior to the exam, reflecting a victim-centric stance that emphasizes the victim's autonomy and dignity above all else, backed by constitutional recognition of woman's right to bodily integrity and personal autonomy. Subsequently, the requirement for the report to explicitly record that consent was obtained is maintained under Section 184(4) BNSS, preserves the legal autonomy of the survivor. Equating both the sections, the evident change well-known is that the imposition of a strict, time-bound limit of "within seven days" in sub section (6) of Section 184 BNSS, replacing the "without delay" directive in CrPC to improve evidence collection. This ensures that evidence is processed promptly, thereby reducing the risk of procedural delays.

Proceeding with the limb of privacy, Section 164A of CrPC required documentation and reporting, while it does not expressly elaborate privacy safeguards. Privacy protections are largely heightened by judicial interpretation rather than statutory text. In ***Delhi Domestic Working Women's Forum v. Union of India***[460], the Supreme Court underscored the importance of dignity and victim-sensitive procedures. Further strengthening these principles, the Supreme Court reinforced the principle of bodily autonomy by reiterating the prohibition on the two-finger test in ***State of Jharkhand v. Shailendra Kumar Rai @ Pandav Rai***[461]. The Court held that the practice violates a survivor's dignity and right to privacy, directed that doctors conducting such tests may face disciplinary action, and ordered reforms in medical education to eliminate such procedures. On the other hand BNSS operating in a post-Puttaswamy constitutional landscape recognizes right to privacy as a fundamental right in the case of ***K.S Puttaswamy v Union of India***[462], thereby reshaping the procedures of medical examination. This shift demonstrates a movement from procedural privacy to rights–based privacy.

Medical examinations play an integral part in rape investigations, acting as a link between the victim's confession and the forensic evidence needed for a successful conviction, as both

460 (1995) 1 S.C.C. 14 (India).

461 (2022) SCC OnLine SC 1494 (India).

462 (2017) 10 S.C.C. 1 (India).

Section 164A CrPC and Section 184 BNSS accentuate. These provisions reveal the Indian legal system's larger commitment to defending the rights and dignity of rape victims.

A legal framework that aims to strike a balance amid the expectations of the criminal justice system and the rights of survivors is proven by the emphasis on consent and the thorough documentation requisite in the medical report. Thus, Section 184 of the BNSS, which replaces Section 164A of CrPC, substantially retains similar protective framework with procedural refinements. In tandem with assisting the collection of crucial evidence for the prosecution of such criminal offenses, these procedural provisions ensure medical examinations of rape victims are carried out swiftly, competently, and with due consideration for the victim's consent and dignity.

FEATURE	SECTION 164A CrPC	SECTION 184 BNSS
Consent	Mandatory	Mandatory
Timeline	Without delay	Within 7 days
Privacy	Judicial interpretation	Post-privacy jurisprudence context
Gender Sensitivity	Not explicit	Not explicit

FINDINGS AND SUGGESTIONS:

Despite the robust statutory framework, practical challenges are pertinent. Section 184 BNSS stipulates the time framework as seen against the backdrop of "*Law of Progressive Change*[463]" medical examination to be made within twenty-four hours, however, the compliance is impeded by logistical and administrative constraints. This systematic failure was established in **Nirbhaya Gang Rape Case**, jeopardizing the collection of crucial medical evidence which calls for stricter enforcement and accountability mechanisms. At the same time, there are instances demonstrating effective adherence to guidelines. In certain recent cases such

463 Sharma, *supra* note [3], at [14].

as the **RG Kar case**[464], medical examinations were reportedly conducted in line with Ministry of Health and Family Welfare protocols, preserving evidentiary integrity and survivor dignity. These contrasting examples show that implementation, rather than the legislation, determines the quality of victim care.

Inclusivity is another emerging concern. ***National Legal Services Authority v Union of India***[465], recognized transgender as a third gender and are entitled to constitutional rights. The irony is that while the constitution identifies them, the medico-legal provisions under criminal procedural framework, inclusive of BNSS are gender specific[466]. Furthermore, a study carried out by the **Department of Justice, Ministry of Law and Justice, UNDP (United Nations Development Program), and an NGO called "Partners of Law in Development"** revealed that the medical examinations were not performed in accordance with the Ministry of Health and Family Welfare's guidelines because consent was not formally obtained, undermining the victim's rights[467]. Reflecting on this, although consent is recognized in law, its operational clarity remains weak. Thus, reform should include standardized consent forms in simple language, video-recorded consent where appropriate and mandatory explanation of rights. Further consent must be treated as an ongoing process rather than a one-time signature.

Gender sensitivity being an indispensable component of survivor dignity, has been consistently held by the courts that medical examination be conducted by a female practitioner whenever possible, BNSS does not explicitly mandate this. Sexual-assault examinations involve deeply personal and intrusive procedures that can be emotionally distressing. Ensuring a gender-sensitive environment is therefore essential for minimizing this trauma. The absence of such a statutory requirement represents a significant gap in victim protection was the contention of a Bench of the Karnataka High Court led by Justice M.G. Uma in ***Ajay Kumar Behera v. State of Karnataka***[468]. The clarion call was that investigating officers must necessarily ensure that rape victims are medically examined by, or under the guidance of, a

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464 *In re* Alleged Rape and Murder of Trainee Doctor in R.G. Kar Medical College and Hospital, Kolkata and Related Issues, (2024) SCC OnLine SC 2125 (India).

465 (2014) 5 S.C.C. 438 (India).

466Akshita Gopal, *Medical Examination of Rape Victims: Provisions under CrPC and Evidence*, IPLEADERS, https://blog.ipleaders.in/medical-examination-of-rape-victim/ (last visited Jan. 31, 2026).

467 *Norms Not Followed in Medical Examination of Rape Victims, Says Study*, HINDUSTAN TIMES, https://www.hindustantimes.com/india-news/norms-not-followed-in-medical-examination-of-rape-victims-says-study/story-ehvOkj68j4cQp0uFIV9ToN.html (last visited Mar. 15, 2026).

468 (2024) SCC OnLine Raj 1270 (India).

female licensed physician.The Court highlighted an evident anomaly in the statutory framework: while Section 53(2) of the Criminal Procedure Code (CrPC), now reflected in Section 51 of the BNSS provides that female accused persons shall be examined only by female medical practitioners, Section 164A of the CrPC, which governs the medical examination of rape victims, contains no such explicit protection. This omission has been carried forward verbatim into Section 184 of the BNSS. The absence of a statutory mandate for gender-sensitive examination not only undermines survivor dignity but also risks re-traumatization, thereby rendering the criminal justice system unfriendly to victim[469]. Given the intimate and intrusive nature of sexual assault, the presence of a female medical examiner can largely reduce anxiety and psychological distress. A statutory requirement subject to practical availability would align the law with victim-centric principles.

Further concerns also persist regarding the discredited practices, say two finger-tests. Although, it has been declared unconstitutional, instances of its continuous practice have been reported notably in the case of ***Vinayak Krishna v State of Rajasthan***[470]. Such practices pave way for secondary victimization obstructing the victim-centric progress. More importantly, the environment in which medical examinations occur affects the survivors comfort. Many government hospitals lack privacy infrastructure, trained personnel or specialized units for handling sexual assault cases. Establishing victim friendly forensic centers ensures privacy. In essence, reform agenda should move from procedural compliance to survivor well-being, thereby dignity preserved in the process.

CONCLUSION:

The transition from Section 164A CrPC to section 184 BNSS reflects the legislative continuity combined with an attempt at modernization. Section 184 of the Bharatiya Nagarik Suraksha Sanhita, 2023 which replaces Section 164A of the Code of Criminal Procedure, 1973, largely retains the core components of medical examination - mandatory procedures including consent and requirement of a medical practitioner, while marks a procedural restructuring aimed at tightening evidentiary timelines. The revised framework under BNSS can be admitted

469*Section 184 of Bharatiya Nagarik Suraksha Sanhita, 2023*, DRISHTI JUDICIARY, https://drishtijudiciary.com/current-affairs/section-184-of-bharatiya-nagarik-suraksha-sanhita-2023 (last visited Jan 31, 2026).

470 (2024) SCC OnLine Raj 1270 (India).

as a step to enhance efficiency of the investigation by imposing stricter deadlines, which protects the integrity of the evidence and by extension, the victim's pursuit of justice.

While it has not introduced new fundamental rights for victims, has largely refined existing ones by creating a faster, more accountable, and science-driven documentation process, primarily by reducing the room for interpretation in "timely" investigation. Thus, it can be described as an incremental improvement rather than a transformative shift. It provides framework compatible with victim-centric but the real test lies in the enforcement, accountability and survivor oriented infrastructure. Accordingly, the call of the hour is proper and strict implementation of the BNSS, coupled with the identification and rectification of existing lacunae, which deems fit to advance a genuinely victim-centric approach within the criminal justice system.

DOES THE BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 STRIKE A BALANCE? DUE PROCESS, STATE SECURITY, AND CONSTITUTIONAL BOUNDARIES IN INDIA'S NEW CRIMINAL PROCEDURE REGIME

Ms P. Poornima[471]

INTRODUCTION

Criminal procedure constitutes the institutional backbone of a constitutional democracy, governing the delicate interface between the coercive authority of the State and the fundamental liberties of the individual.[472] In India, this relationship was historically regulated by the Code of Criminal Procedure, 1973 (CrPC), which provided the procedural architecture for investigation, arrest, trial, and punishment.[473] Over time, however, the CrPC attracted sustained criticism for systemic delays, procedural inefficiencies, its colonial provenance, and its limited accommodation of victim participation, thereby generating momentum for comprehensive reform.[474]

Against this backdrop, the enactment of the Bharatiya Nagarik Suraksha Sanhita, 2023 represents a paradigmatic shift in India's criminal procedural regime. The BNSS purports to recalibrate criminal process in alignment with constitutional values, contemporary socio-legal realities, and rapid technological advancement.[475] Its emphasis on digitised procedures, compressed timelines, and enhanced investigative efficiency reflects a policy orientation towards swift justice and strengthened deterrence.[476] Nevertheless, within a constitutional order grounded in the rule of law, efficiency cannot operate as an autonomous or overriding value, particularly where personal liberty and fair trial guarantees are implicated.[477]

The central concern, therefore, is whether the BNSS succeeds in maintaining a constitutionally permissible balance between the rights of the accused, the interests of victims, and the imperatives of state security.[478] This paper interrogates that balance by situating the BNSS within India's constitutional framework and the Supreme Court's jurisprudence on due process,

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[471] Assistant Professor in Law, KMC College of Law, Tirupur.
[472] A V Dicey, *Introduction to the Study of the Law of the Constitution* (10th edn, Macmillan 1959).
[473] Code of Criminal Procedure 1973 (India).
[474] Law Commission of India, 'Report on Delay in Criminal Justice System' (Law Commission Report No 239, 2012).
[475] Bharatiya Nagarik Suraksha Sanhita 2023 (India).
[476] Ministry of Home Affairs, 'Statement of Objects and Reasons: BNSS Bill 2023'.
[477] Maneka Gandhi v Union of India (1978) 1 SCC 248.
[478] Hussainara Khatoon v State of Bihar (1979) 3 SCC 532.

fairness, and proportionality.[479] It seeks to evaluate whether the procedural innovations introduced under the BNSS reinforce constitutional safeguards or risk reconfiguring criminal justice in a manner that prioritises administrative efficiency over substantive justice.[480]

OBJECTIVES OF THE STUDY

The present study seeks to achieve the following objectives:

- To examine the major procedural changes introduced by the BNSS, particularly those involving digitisation and expedited processes.
- To assess the constitutional validity of these changes under Articles 14, 19, and 21.
- To analyse the impact of increased police powers and surveillance mechanisms on civil liberties.
- To evaluate how these reforms affect vulnerable groups within the justice system.
- To suggest safeguards that align procedural reforms with constitutional principles.

RESEARCH QUESTION

Does the Bharatiya Nagarik Suraksha Sanhita, 2023 successfully balance constitutional guarantees of due process with the State's interest in maintaining security and efficiency?

METHODOLOGY

The present study adopts a doctrinal and analytical research methodology, primarily grounded in the examination of statutory provisions, constitutional texts, and judicial precedents. The Bharatiya Nagarik Suraksha Sanhita, 2023 is analysed through close textual interpretation, with particular emphasis on its procedural innovations and their constitutional implications.

Constitutional provisions, especially Articles 14, 19, and 21 of the Constitution of India, are examined alongside authoritative judicial pronouncements of the Supreme Court to assess the conformity of the BNSS with established principles of due process, fairness, and proportionality. In addition, comparative doctrinal references to foundational principles of criminal procedure and constitutional jurisprudence are employed to evaluate the normative coherence and legitimacy of the reforms introduced under the BNSS.

[479] K S Puttaswamy v Union of India (2017) 10 SCC 1.
[480] Modern Dental College v State of Madhya Pradesh (2016) 7 SCC 353.

The study further relies on secondary sources, including scholarly articles, Law Commission reports, parliamentary and committee materials, and legal commentaries, to contextualise the reforms within broader debates on criminal justice, technological governance, and civil liberties. While the research remains doctrinal in nature, it adopts a critical normative lens to assess whether procedural efficiency under the BNSS aligns with constitutional morality and the rule of law.

KEY PROCEDURAL INNOVATIONS UNDER THE BNSS

Digitalisation of Criminal Procedure

The Bharatiya Nagarik Suraksha Sanhita (BNSS) marks a significant procedural shift by embedding technology at multiple stages of the criminal justice process. The introduction of e-FIRs, electronic service of summons and warrants, mandatory audio-video recording of searches and seizures, and the maintenance of digital case diaries seeks to enhance transparency, accountability, and speed in criminal investigations and trials.[481] Additionally, the provision for virtual hearings in remand proceedings and for recording evidence reflects a broader attempt to align criminal adjudication with digital governance and reduce systemic delays.[482] However, this techno-legal transformation is not merely administrative; it substantively reshapes the character of criminal proceedings. Dependence on digital infrastructure raises serious concerns about access to justice for digitally marginalised populations, potential manipulation or tampering with electronic evidence, and the imbalance of power between prosecution and defence in technologically driven procedures, thereby challenging the principle of equality of arms in criminal trials.[483]

7A. Impact on Undertrial Prisoners

A critical concern arising from the BNSS is its potential impact on undertrial prisoners, who constitute a substantial majority of India's prison population and are already vulnerable to prolonged detention and systemic delays.[484] The increasing reliance on virtual remand hearings and digitised proceedings risks diminishing direct judicial engagement with the accused,

[481] Bharatiya Nagarik Suraksha Sanhita 2023 (India), ch II; Ministry of Home Affairs, 'Statement of Objects and Reasons: BNSS Bill 2023'.
[482] Supreme Court of India, *In Re: Guidelines for Court Functioning through Video Conferencing* (2020) Suo Motu Writ Petition (C) No 5 of 2020.
[483] Manubhai Pragji Vashi v State of Maharashtra (1995) 5 SCC 730; Nandini Satpathy v PL Dani (1978) 2 SCC 424.
[484] National Crime Records Bureau, *Prison Statistics India 2022* (NCRB 2023).

thereby weakening the court's ability to meaningfully assess the legality and necessity of continued incarceration.[485] In many cases, inadequate technological infrastructure within prisons, limited internet connectivity, and the absence of confidential channels for consultation with counsel may impair effective legal representation and participation in proceedings.[486] Consequently, rather than mitigating structural inequities in the criminal justice system, the BNSS's digitisation framework may inadvertently entrench existing injustices, making undertrial prisoners more susceptible to procedural marginalisation and extended deprivation of liberty without robust judicial oversight.[487]

The BNSS's growing reliance on digital evidence introduces complex due process concerns relating to authenticity, integrity, and chain of custody. Electronic materials—such as CCTV footage, call records, metadata, and device extractions—are inherently susceptible to alteration, fabrication, or contextual misrepresentation if not rigorously regulated.[488] While digital evidence has the potential to enhance accuracy and objectivity in criminal investigations, its admissibility must be subjected to strict procedural safeguards comparable to those embodied in Section 65B of the BSA.[489] Any relaxation of certification requirements, forensic validation, or documented custody trails risks undermining evidentiary reliability and compromising the accused's right to a fair trial. Accordingly, the BNSS must ensure that technological efficiency does not dilute established evidentiary standards that are essential to constitutional due process.[490]

Victim-Centric Reforms

The BNSS marks a noticeable shift towards a more victim-centric criminal justice framework by institutionalising mechanisms for timely communication, greater access to case-related information, and stricter timelines for investigation and trial.[491] These reforms reflect the trajectory of contemporary jurisprudence, which increasingly recognises victims not merely as witnesses but as legitimate stakeholders whose interests must be accounted for within the criminal process. By facilitating participation and reducing procedural uncertainty, the BNSS

[485] *Arnesh Kumar v State of Bihar* (2014) 8 SCC 273.
[486] Commonwealth Human Rights Initiative, *Undertrial Prisoners in India: Issues and Challenges* (CHRI 2021).
[487] *Hussainara Khatoon v State of Bihar (No 1)* (1979) 3 SCC 532.
[488] *State (NCT of Delhi) v Navjot Sandhu (Parliament Attack Case)* (2005) 11 SCC 600.
[489] Bharatiya Sakshya Adhiniyam 2023, s 65B; *Anvar P V v PK Basheer* (2014) 10 SCC 473.
[490] *Arjun Panditrao Khotkar v Kailash Kushanrao Gorantyal* (2020) 7 SCC 1.
[491] Bharatiya Nagarik Suraksha Sanhita 2023 (India), ch II; Ministry of Home Affairs, 'Statement of Objects and Reasons: BNSS Bill 2023'.

seeks to restore confidence in the justice system and prevent secondary victimisation. However, this heightened emphasis on victim satisfaction also carries constitutional and procedural risks, as an overcorrection in favour of victims may erode the accused's right to a fair trial, dilute the presumption of innocence, and compromise the principle of institutional neutrality that underpins criminal adjudication.[492]

Expanded Police Powers and Timelines

The BNSS embodies a managerial orientation to criminal justice by imposing tighter procedural timelines and simultaneously vesting greater discretion in investigative agencies.[493] While efficiency and expedition are legitimate objectives, this shift prioritises administrative speed over deliberative judicial control. The emphasis on performance-driven investigation risks normalising expedited decision-making at the cost of due process, particularly in complex or sensitive cases. In the absence of robust counterbalancing safeguards—such as stronger judicial review, clearer accountability mechanisms, and independent oversight—this expanded discretion may weaken judicial supervision, create scope for subjective or politically influenced policing, and ultimately heighten the risk of arbitrariness within the criminal process.[494]

CONSTITUTIONAL ANALYSIS

Article 21 and Procedural Fairness

Article 21 of the Constitution of India requires that any deprivation of personal liberty must be effected through a procedure that is not merely prescribed by law but is also just, fair, and reasonable, as authoritatively laid down in *Maneka Gandhi v. Union of India (1978)*.[495] Consequently, the digital procedures introduced under the BNSS—such as electronic remand, virtual recording of evidence, and digitised case management—must conform to constitutional benchmarks of transparency, accessibility, and non-arbitrariness.[496] While technological integration may enhance efficiency, it cannot override substantive due process guarantees. Further, in light of *K.S. Puttaswamy v. Union of India (2017)*, any state-driven digitisation in

[492] *Narendra Singh v State of MP* (2004) 10 SCC 699; *Kali Ram v State of Himachal Pradesh* (1973) 2 SCC 808.
[493] Law Commission of India, 277th Report on "Wrongful Prosecution (Miscarriage of Justice): Legal Remedies" (2018).
[494] *D.K. Basu v State of West Bengal* (1997) 1 SCC 416; *State of Punjab v Baldev Singh* (1999) 6 SCC 172.
[495] *Maneka Gandhi v Union of India* (1978) 1 SCC 248.
[496] Bharatiya Nagarik Suraksha Sanhita 2023 (India), ch II; Ministry of Home Affairs, 'Statement of Objects and Reasons: BNSS Bill 2023'.

criminal procedure must be accompanied by clear safeguards governing data collection, storage, retention, and use, and must satisfy the test of proportionality. In the absence of explicit statutory protections for informational privacy, digital inclusivity, and informed participation—particularly for technologically vulnerable accused persons—the BNSS's reliance on digital processes risks constitutional infirmity under Article 21 and invites serious concerns regarding procedural fairness and equality before law.[497]

Fair Trial Guarantees

The right to a fair trial constitutes an integral and non-derogable component of Article 21, as consistently affirmed by the Supreme Court in decisions such as *Hussainara Khatoon v. State of Bihar* and *Zahira Habibullah Sheikh v. State of Gujarat*.[498] Accordingly, the use of virtual hearings and digitally recorded statements under the BNSS must be structured in a manner that preserves the core elements of adversarial criminal procedure, including effective legal representation, a meaningful opportunity for cross-examination, and impartial judicial oversight.[499] While technological mechanisms may facilitate procedural efficiency, they cannot displace or dilute these foundational safeguards. Any digital innovation that impairs the ability of the accused to participate fully in proceedings, consult counsel confidentially, or challenge prosecution evidence risks undermining the constitutional guarantee of a fair trial and distorting the balance between efficiency and justice.

Article 14 and Non-Arbitrariness

Article 14 not only prohibits arbitrary state action but also embodies the principle of substantive equality in the administration of criminal justice. In the context of the BNSS, the increasing reliance on digital processes risks producing unequal outcomes for those lacking technological access or literacy. Rural populations, economically disadvantaged individuals, and the digitally illiterate may face structural barriers in navigating e-filing, virtual hearings, and digital evidence systems, effectively placing them at a procedural disadvantage. This differential impact, though facially neutral, may amount to indirect discrimination within the criminal

[497] Justice B.N. Srikrishna Committee Report on Data Protection (2018); Law Commission of India, 277th Report on Wrongful Prosecution (2018).
[498] *Hussainara Khatoon v State of Bihar* (1979) 3 SCC 532; *Zahira Habibullah Sheikh v State of Gujarat* (2004) 4 SCC 158.
[499] Bharatiya Nagarik Suraksha Sanhita 2023 (India), ch II (provisions on virtual hearings and electronic evidence).

process, thereby undermining the constitutional commitment to equal protection of laws and meaningful access to justice.

Article 19 and Proportionality

Enhanced surveillance and expanded data collection under the BNSS directly engage the freedoms guaranteed under Article 19, particularly the rights to free expression, movement, and privacy-related autonomy. Any restriction on these liberties must withstand the test of proportionality, as articulated by the Supreme Court in *Modern Dental College v. State of Madhya Pradesh (2016)* and reaffirmed in *K.S. Puttaswamy v. Union of India (2017)*. Accordingly, state security measures must not only pursue a legitimate objective but must also be necessary, rationally connected to that objective, and represent the least restrictive means available. A surveillance framework that operates in the absence of clear statutory limits, independent oversight, and procedural safeguards risks becoming overbroad and intrusive, thereby failing to satisfy constitutional standards and impermissibly tilting the balance in favour of state control over individual liberty.

Separation of Powers and Judicial Oversight

Beyond Articles 14, 19, and 21, the constitutional validity of the BNSS must also be examined through the lens of separation of powers and the role of the judiciary as a guardian of liberty. Criminal procedure historically operates as a site of tension between executive efficiency and judicial control. The BNSS, by enhancing police discretion and normalising digital investigative mechanisms, risks shifting this balance decisively towards the executive branch.[500]

In *D.K. Basu v. State of West Bengal (1997)*, the Supreme Court underscored that procedural safeguards exist precisely to curb executive arbitrariness in the exercise of coercive powers.[501] However, the BNSS's emphasis on managerial efficiency, expedited timelines, and technological automation may inadvertently weaken meaningful judicial scrutiny—particularly in remand, bail, and surveillance authorisations. Virtual processes, if conducted mechanically rather than deliberatively, could reduce judicial oversight to a formal ritual rather than a substantive constitutional check.

[500] Constitution of India, arts 50 and 21; see also *State of Bihar v Subhash Singh* (1997) 4 SCC 430.
[501] *D.K. Basu v State of West Bengal* (1997) 1 SCC 416.

A constitutionally sound criminal procedure must preserve the judiciary's supervisory role over police power. Therefore, any implementation of the BNSS must ensure that digitisation does not translate into procedural rubber-stamping or dilution of judicial independence.

Constitutional Morality and the Future of Criminal Procedure

Ultimately, the constitutional question is not merely whether the BNSS is efficient, but whether it aligns with the idea of **constitutional morality**—a principle repeatedly affirmed by the Supreme Court in cases such as *Navtej Singh Johar v. Union of India (2018)*.[502] Constitutional morality requires that criminal law and procedure respect human dignity, due process, and institutional accountability, rather than reducing justice to administrative speed.

The BNSS represents a critical inflection point in India's criminal justice trajectory: from a rights-centred model to a technology-driven managerial state.[503] Whether this transition strengthens or weakens constitutional democracy will depend less on the text of the law and more on its interpretation, implementation, and judicial oversight.

If the BNSS is applied with robust safeguards, strict proportionality, and vigilant courts, it could modernise criminal justice without eroding liberties. If not, it risks normalising a preventive, surveillance-heavy model that privileges state security over individual freedom.

Comparative Study: Digital Criminal Procedure, Surveillance, and Due Process

To evaluate whether the BNSS strikes an appropriate balance, it is instructive to compare India's approach with other constitutional democracies that have already integrated technology into criminal procedure while grappling with similar tensions between security and liberty.

UK

In the United Kingdom, the integration of technology into criminal procedure has proceeded alongside strong procedural and institutional safeguards, offering a useful model for India. The UK has adopted digital case management systems, limited remote hearings, body-worn cameras for police, and structured electronic evidence management, all aimed at improving efficiency and accountability.[504] However, these innovations operate within a well-defined legal framework, most notably the Investigatory Powers Act, 2016, which strictly regulates

[502] *Navtej Singh Johar v Union of India* (2018) 10 SCC 1.
[503] Bharatiya Nagarik Suraksha Sanhita 2023 (India), general scheme and digital provisions.
[504] Ministry of Justice, *Digital Justice: Review of Online Procedure* (2019); and HM Courts & Tribunals Service, *Transforming Courts and Tribunals* (2021).

surveillance and data interception.[505] Crucially, digital surveillance requires prior judicial authorisation, and an independent Investigatory Powers Commissioner oversees compliance, ensuring transparency and accountability.[506] This model demonstrates that technological modernisation need not undermine civil liberties if accompanied by rigorous judicial control and independent monitoring. For India, the key lesson is that digitisation under the BNSS must be embedded within a comparable safeguards regime—specifically, a BNSS-specific surveillance authorisation mechanism supervised by a magistrate and the creation of an independent digital oversight body to regulate, audit, and review the use of investigative technologies.[507]

European Union: Privacy-First Approach

Under the European Union's General Data Protection Regulation (GDPR), the processing of criminal justice data is governed by strict principles of purpose limitation, data minimisation, time-bound retention, and the right of individuals to access and correct their personal information.[508] While many EU jurisdictions permit the use of digital evidence, electronic case records, and virtual hearings, such practices operate within a tightly regulated data protection framework that prevents arbitrary or excessive state surveillance. This privacy-first approach underscores that technological efficiency cannot justify unrestricted data collection or indefinite storage of sensitive information.[509] For India, this comparative experience suggests that the digitisation of criminal procedure under the BNSS must be accompanied by a dedicated Criminal Justice Data Protection Code that clearly delineates who may access digital evidence, the permissible duration of data retention, and the circumstances under which such data must be deleted.[510] Absent such statutory safeguards, the BNSS's digital architecture risks falling short of the constitutional privacy standards articulated in *K.S. Puttaswamy v. Union of India (2017)* and may invite serious constitutional challenges.

[505] Investigatory Powers Act 2016, ss 2, 32–58, 62–65.
[506] Investigatory Powers Commissioner's Office, *Annual Report 2022–23* (IPCO, 2023).
[507] Compare R (Daly) v Secretary of State for the Home Department [2001] 2 AC 532 (HL) (principle of proportionality in state intrusion).
[508] Regulation (EU) 2016/679 (General Data Protection Regulation) arts 5, 17, 18.
[509] European Data Protection Board, *Guidelines on Data Protection in Law Enforcement Processing* (2022).
[510] Compare UK Data Protection Act 2018, Part 3 (Law Enforcement Processing).

United States: Adversarial Safeguards in Digital Trials

In the United States, while virtual hearings are increasingly used for procedural and administrative matters, the criminal justice system continues to prioritise the accused's right to a physical, in-person trial in serious cases, recognising that remote proceedings can compromise adversarial fairness. Cross-examination remains a central and indispensable procedural safeguard, and digital or electronic evidence is subject to stringent chain-of-custody requirements to preserve its authenticity and reliability. This model reflects a calibrated approach in which technology supplements, rather than substitutes, traditional trial safeguards. For India, this comparative experience suggests that virtual hearings under the BNSS should be confined primarily to routine procedural matters, while serious criminal trials must retain physical adjudication. In particular, the personal presence of the accused should be mandatory during the framing of charges, examination of key prosecution witnesses, and sentencing proceedings, so as to prevent any digital dilution of fair trial rights and to maintain the integrity of the adversarial process.

TECHNOLOGY, SURVEILLANCE, AND PRIVACY

The technological architecture of the BNSS intersects directly with the constitutional right to privacy, as recognised in *K.S. Puttaswamy v. Union of India (2017)*. Provisions enabling audio-video recording of searches, digital tracking, electronic case diaries, and large-scale storage of personal and evidentiary data introduce significant risks relating to purpose limitation, data minimisation, informed consent, and secure retention. While such measures may enhance evidentiary reliability and administrative efficiency, they simultaneously expand the State's capacity for continuous procedural surveillance over individuals within the criminal justice system. In the absence of a dedicated, criminal justice–specific data protection framework governing access, use, sharing, and deletion of digital records, there is a credible danger that intrusive surveillance practices may become institutionalised rather than exceptional. This normalisation of digital monitoring threatens to recalibrate criminal procedure from a rights-based model to a security-driven regime, thereby straining the constitutional balance between investigative necessity and informational privacy.

IMPACT ON VULNERABLE POPULATIONS

Digitisation, while ostensibly progressive, risks creating new forms of structural exclusion for individuals who lack technological literacy, digital access, or institutional support. For

undertrial prisoners, rural accused persons, and socially and economically marginalised communities, virtual proceedings may operate less as instruments of efficiency and more as procedural barriers to meaningful participation in the criminal process. Limited access to devices, unreliable internet connectivity, language constraints, and inadequate legal aid in digital formats can undermine their ability to effectively engage with hearings, consult counsel, and understand proceedings. Consequently, digital reforms under the BNSS must be accompanied by robust inclusive safeguards—such as state-supported technological infrastructure, assisted digital access, and hybrid hearing options—to ensure that technological modernisation does not erode substantive equality and the constitutional promise of equal access to justice.

JUDICIAL OVERSIGHT AND ACCOUNTABILITY

The constitutional sustainability of the BNSS ultimately hinges on the strength of judicial supervision within the criminal process. Magistrates and judges must function as active constitutional gatekeepers, rigorously scrutinising the use of technological tools, police discretion, and expedited procedures to ensure that administrative efficiency does not displace substantive justice. In a digitised criminal justice framework, judicial oversight acquires heightened significance, as automation and virtual processes may otherwise normalise procedural shortcuts or unexamined state power. Accordingly, the effective implementation of the BNSS requires the reinforcement of accountability mechanisms—through clearer standards of review, recorded reasoning in remand and surveillance decisions, and independent oversight of investigative agencies—to prevent potential misuse of expanded powers and to preserve the constitutional balance between state authority and individual liberty.

POLICY & LEGAL REFORM PROPOSALS

India must incorporate a dedicated Criminal Justice Data Protection framework within the BNSS to govern the use of digital technologies in investigation and adjudication. Such a regime should clearly regulate the storage, security, and integrity of digital evidence; define the categories of officials authorised to access police databases; prescribe definite, proportionate time limits for retention of personal data; and impose strict penalties for unauthorised access, misuse, or leakage of digital records. Embedding these safeguards within the criminal procedure framework is essential to prevent arbitrary surveillance and data abuse while enabling responsible use of technology. This approach would align the BNSS with the

constitutional privacy mandate laid down in *K.S. Puttaswamy v. Union of India (2017)* as well as with the rights-based data governance standards prevalent in the European Union, thereby ensuring that digitisation strengthens—rather than undermines—constitutional liberties.

Strengthen Judicial Oversight over Police Powers

To ensure constitutional accountability, magistrates must be vested with strengthened supervisory powers over the use of digital investigative tools under the BNSS. This should include a mandatory, reasoned review of any proposed digital surveillance or data collection measures before their deployment, rather than permitting post-facto regularisation. Courts must also retain the authority to exclude or strike down digital evidence that has been obtained in violation of due process or privacy safeguards, in line with evolving principles of fair trial and legality of evidence. Further, magistrates should be empowered to direct the deletion of unlawfully collected personal data from police or prosecutorial databases to prevent continuing rights violations. Such a framework would mirror the oversight mechanisms prevalent in the UK and U.S., where judicial control functions as a critical check against executive overreach in technologically mediated criminal investigations.

Hybrid Court Model

Instead of fully virtual proceedings, India should adopt a hybrid model:

Type of Proceeding	**Mode**
Bail hearings	Hybrid (physical preferred)
Routine adjournments	Virtual
Remand hearings	Physical in serious cases
Trial evidence	Primarily physical
Case management	Digital

This ensures efficiency without sacrificing fairness.

Digital Legal Aid for Marginalised Accused

To prevent digital exclusion and uphold substantive equality under Article 14, the implementation of the BNSS must be supported by measures to bridge the technological divide in the criminal justice system. The State should provide basic digital access to undertrial prisoners, establish digital kiosks with reliable internet in rural courts, and strengthen digital

training for legal aid lawyers. Virtual proceedings must also incorporate translation and interpretation services to ensure meaningful participation. These safeguards are necessary to ensure that digitisation under the BNSS promotes, rather than restricts, equal access to justice.

Independent Oversight Commission

A dedicated National Criminal Justice Technology Commission should be established to ensure institutional accountability in the use of digital tools under the BNSS. This independent body should be mandated to monitor police deployment of technological and surveillance measures, investigate complaints of misuse or overreach, and publish annual transparency reports on digital policing and data governance. Such a commission would function as an external oversight mechanism, akin to the UK model, providing systemic checks on executive power while reinforcing public trust, legality, and constitutional compliance in India's digitised criminal justice regime.

Final Conclusion: Does the BNSS Strike a Balance?

The BNSS represents a progressive reform in intent but remains constitutionally fragile in design. While it modernises criminal procedure through digitisation, expedited timelines, and enhanced victim participation, it does not yet provide adequate safeguards for privacy, fair trial rights, and equal access to justice. Moreover, the expansion of police discretion under technologically driven processes is not sufficiently balanced by robust judicial oversight, raising concerns about executive overreach. Consequently, the BNSS achieves only a partial balance between efficiency and constitutional liberties, requiring further institutional and procedural safeguards to ensure its full constitutional sustainability.

The optimal path forward is for India to transition from a technology-led model of criminal justice to a rights-led digital criminal justice framework. This requires embedding stronger statutory data protection safeguards within the BNSS, institutionalising a hybrid court model that preserves in-person adjudication for serious matters, ensuring strict and proactive judicial oversight over investigative powers, and establishing independent accountability bodies to monitor the use of digital tools. Only through this calibrated approach can the BNSS genuinely reconcile the imperatives of due process with the demands of state security while preserving constitutional morality and the rule of law.

RECOMMENDATIONS

1. Incorporation of explicit data protection and privacy safeguards within the BNSS framework.
2. Stronger Judicial Control over Digital Evidence
3. Hybrid procedural models allowing non-digital alternatives for vulnerable populations.
4. Capacity-building for criminal justice actors on constitutional use of technology.
5. Clear statutory standards governing the admissibility and authentication of electronic evidence.

CONCLUSION

The Bharatiya Nagarik Suraksha Sanhita, 2023 represents an ambitious attempt to modernise India's criminal procedural framework. While its emphasis on efficiency, technology, and victim participation reflects contemporary governance priorities, constitutional legitimacy demands that such reforms remain firmly anchored in due process and the rule of law.

This paper concludes that the BNSS can strike a meaningful balance between due process and state security only if its implementation is guided by constitutional morality, judicial vigilance, and robust safeguards against arbitrariness and surveillance. In a constitutional democracy, justice must not only be swift, but also fair, inclusive, and liberty-preserving.

A STUDY ON PROCEDURAL INNOVATIONS AND DEMOCRATIC CONCERNS UNDER INDIA'S NEW CRIMINAL LAWS

Ms. S. Shreevardhini[511], Ms. S. Susamskritha[512]

CHAPTER I: THE PHILOSOPHICAL TRANSITION FROM PUNITIVE COLONIALISM TO CONSTITUTIONAL NYAYA

1.1 The Decolonization Narrative and the Semantic Shift

The Union Parliament enacted Bharatiya Nyaya Sanhita (BNS), 2023[513], to finally get rid of the "colonial soul" of the old Indian Penal Code, 1860 (IPC). But look closer this shift isn't just about swapping out a few words. It's about a whole different philosophy. The IPC was built for the British to keep their hold on India, to keep "subjects" in line. The BNS, on paper at least, claims to focus on Nyaya-Justice, putting citizens at the centre instead of the state. But when you actually dig into the new law, things get messy. Both the 22nd Law Commission and the Parliamentary Standing Committee on Home Affairs (Report No. 246)[514] have wrestled with this supposed transformation. Sure, the BNS cuts down the number of sections from 511 to 358, mostly by merging things together. But if you really count, about three-quarters of the actual law is pretty much a copy-paste from the IPC. Is this a real break from the past, or just the same old bottle with a shiny new label? For the BNS to actually count as "reformed," it has to measure up to the idea of "Constitutional Morality" from *Navtej Singh Johar v. Union of India* which basically means our criminal laws need to keep up with modern democratic values, not just old colonial habits.

1.2 The Expansion of State Authority: Analyzing Section 113 and Section 152

BNS gives the government more power in the name of national security. For the first time, "Terrorism" is now a specific crime under Section 113[515], and its definition is almost a carbon copy of what's in the Unlawful Activities (Prevention) Act (UAPA). The Parliamentary

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[512] Advocate, Madras High court
[513] *See* "The Bharatiya Nyaya Sanhita, 2023 - PRS India," available at https://prsindia.org/billtrack/the-bharatiya-nyaya-sanhita-2023 (noting the government's rhetoric on decolonizing the IPC).
[514] Parliamentary Standing Committee on Home Affairs, *Report No. 246 on the Bharatiya Nyaya Sanhita, 2023*, November 10, 2023 (highlighting recommendations on defining terrorism and mental illness).
[515] Section 113, Bharatiya Nyaya Sanhita, 2023 (defining "terrorist act" to include threats to "economic security" and "unity").

Standing Committee noticed something right away tagging stuff like "intimidating the government" or "hurting economic security" as terrorism is a slippery slope. It could mean way more people get branded as terrorists for reasons that are way too broad. Now, the BNS says it's gotten rid of "Sedition" the infamous Section 124A[516] of the IPC. But in its place, we get Section 152, which punishes "acts endangering sovereignty, unity, and integrity of India."[517] Section 152 is even wider than the old sedition law, and it doesn't have the legal checks like the "incitement to violence" test from *Kedar Nath Singh v. State of Bihar (1962)* that helped protect free speech. So just changing the word "Sedition" doesn't mean the "Seditious Spirit" is gone. If the new law can still be used to silence dissent, the society haven't really moved forward.

1.3 Organized Crime and Mob Lynching

BNS includes "Organized Crime" (Section 111) and "Petty Organized Crime" (Section 112) into the main code. Before, states had their own special laws for this stuff, like MCOCA in Maharashtra. Now, the BNS admits that crime has changed think cyber gangs, financial scams so it centralizes these offenses. The BNS also finally addresses "Mob Lynching" (Section 103(2))[518], making it a crime punishable by life in prison or even the death penalty if a group of five or more murders someone because of their race, caste, or community. That's new. The old IPC just ignored hate crimes like this, even as they dominated headlines. But even with these new laws, there's a catch. The Law Commission warns that too much overlap between the BNS and other acts like the UAPA or the IT Act could let the police pick whichever law is harsher, just to make their case easier. This creates a real risk of people getting caught up in a web of rules, which messes with the basic legal principle that nobody can't punish someone for a crime unless the law clearly mentions.

1.4 From Retribution to Restoration: The Introduction of Community Service

For the first time, the BNS brings in "Community Service"[519] as a real punishment under Section 4(f), at least for minor crimes like defamation, public misconduct by a drunk person,

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[516] Section 124A, Indian Penal Code, 1860 *with* Section 152, Bharatiya Nyaya Sanhita, 2023

[517] *Tajender Pal Singh v. State of Rajasthan*, (noting that Section 152 BNS has its genesis in the repealed Section 124A IPC and must be used as a "shield for national security" and not a "sword against dissent").

[518] Section 103(2), Bharatiya Nyaya Sanhita, 2023 (providing the death penalty or life imprisonment for murder by a group of five or more on specific identity grounds).

[519] Section 4(f), Bharatiya Nyaya Sanhita, 2023 (introducing community service as a punishment for minor offenses); *see also* Explanation to Section 23, Bharatiya Nagarik Suraksha Sanhita, 2023

or even trying to stop a public servant by threatening suicide.[520] It moves us away from just throwing people in jail for everything and nudges us toward "Restorative Justice" helping offenders make amends instead of just locking them up. The Standing Committee points out this could ease the load on our jam-packed prisons, where almost 77% of people are just waiting for trial.[521] But here's the problem is that the law doesn't spell out what "community service" actually means. Without clear rules, magistrates could hand down punishments that are unfair or even humiliating. If we want real reform, community service should mean rehabilitation and giving back not public shaming. That's the only way to respect the dignity of every person, as Article 21 demands. The Jurisprudential Dilemma is BNS really is a double-edged sword. Sure, it updates old definitions, tackles new crimes like lynching and cyber-fraud, and even makes some offenses gender neutral. But at the same time, widening what counts as "sovereignty" and pulling special laws into the main penal code stirs up real worries about democracy. As the law moves from just punishing people (Dand) to actually delivering justice (Nyaya), lawyers and judges need to stay on their toes. Decolonizing the law shouldn't turn into taking away people's basic rights.

CHAPTER II: THE BNSS AND THE PARADIGM OF PROCEDURAL MODERNIZATION NAVIGATING TECHNOLOGY AND RIGHTS

2.1 Digital Integration and the "Anywhere-Anytime" Justice Framework

The Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023[522], takes a big step forward with a "digital-first" approach to criminal procedure. The idea is simple that the cut out the endless delays that haunted the old CrPC. Now, electronic communication isn't just allowed, it's officially part of the process. People can file an e-FIR, even outside their local police station's jurisdiction (Zero FIR), which finally removes the old "jurisdictional hurdle" that kept so many victims silent or waiting. But there's a catch. The so-called "digital leap" runs straight into the "Digital Divide." As LexScripta Magazine pointed out, the rule that says you need a physical signature within three days of e-FIR filing could actually block rural or marginalized folks who

[520] *Concept of Community Service as Punishment under BNS, 2023*, available at https://thelawwaywithlawyers.com/concept-of-community-service-as-punishment-under-bns-2023

[521] National Crime Records Bureau (NCRB) Data (revealing that 77% of Indian prison inmates are undertrials, justifying the need for non-custodial alternatives like community service).

[522] *The Bharatiya Nagarik Suraksha Sanhita, 2023 - PRS India*, available at https://prsindia.org/billtrack/the-bharatiya-nagarik-suraksha-sanhita-2023

just don't have the tech skills or the means to work these hybrid systems[523]. If this digital push is going to work, police stations need to move past the old "chowki culture" and build up a centrally recorded, time-stamped digital setup that's actually ready for everyone.

2.2 Mandatory Forensic Intervention: Section 176 and the Reliability Crisis

One of the bold new rules in the BNSS is mandatory forensic investigation for any crime that could get you seven years or more in prison. Section 176(3)[524] says forensic experts must show up at the crime scene, gather evidence, and here's the real update record the whole thing using their phones or electronic gadgets. The goal is better evidence and less reliance on what people just say happened. The Parliamentary Standing Committee (Report No. 247)[525] found that a lot of states just don't have the labs or experts they'd need to handle all these new requirements. So now, if a trial gets stuck waiting for a forensic report or if someone forgets to record a scene, the accused's right to a speedy trial under Article 21[526] actually gets threatened by the very reforms meant to protect it.

2.3 Videography of Search and Seizure: Section 105 and Transparency

To stop police from abusing their power, planting evidence, coercing witnesses, Section 105 makes it mandatory to record every search and seizure on video[527]. The whole process, including witnesses signing off on the seizure list, goes straight to the Magistrate without delay. Sounds like a win for transparency, and it is. But there's another side: all this video data is sensitive, and the police now have to act as "Data Fiduciaries" under the Digital Personal Data Protection Act (DPDPA), 2023.[528] Without strong cybersecurity, these digital trails could be hacked or misused, turning a tool for justice into a privacy nightmare[529].

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[523] *Digital Transformation of Criminal Investigation in India: A Study of E-FIR, Zero FIR, and Online Complaint Systems*, LexScripta Magazine (2025).
[524] Section 176(3), Bharatiya Nagarik Suraksha Sanhita, 2023; *see also* Standing Order No. 197 on SOP for Audio-Visual Recording, BPR&D.
[525] *Report No. 247 on the Bharatiya Nagarik Suraksha Sanhita*, Standing Committee on Home Affairs, November 10, 2023
[526] *Hussainara Khatoon v. State of Bihar*, 1979 AIR 1360
[527] Section 105, Bharatiya Nagarik Suraksha Sanhita, 2023; *Recording of Search and Seizure Through Audio-Video Electronic Means*, Live Law (2025).
[528] *Indian Police Journal (Jan-June 2025) - AI in Policing Special Edition*, BPR&D (highlighting police as "Data Fiduciaries" under DPDPA 2023).
[529] *Technology and Transparency: Evaluating the Impact of e-Courts and BNSS Reforms on Justice Delivery*, International Journal of Advanced Academic Studies (2025).

2.4 The Tension of Extended Custody: Section 187 and Personal Liberty

Maybe the most controversial change is how the BNSS handles police custody. Earlier, under the CrPC, police only got 15 days of custody, right at the start of the remand period. Now, under Section 187[530], those 15 days can be split up and used at any point during the first 40 or even 60 days of total detention. Legal experts warn that this change could lead to a "Democratic Deficit." It gives police more chances to oppose bail, arguing they still need time for interrogation, even weeks into detention. The old safeguard "otherwise than in police custody" is gone, which means more risk of abuse or evidence planting. This new power needs real scrutiny if we're going to protect personal liberty under Article 21. The BNSS is a huge step toward updating Indian criminal procedure for the modern era. Time-bound investigations like wrapping up rape cases in two months and tamper-proof apps like e-Sakshya are big improvements[531]. These changes only work if the courts find a balance. Efficiency matters, but not at the cost of basic rights. In the end, the BNSS's success depends on whether the judiciary can keep things human and legally sound while technology moves forward.

CHAPTER III: THE BSA AND THE EVOLVING LANDSCAPE OF EVIDENTIARY INTEGRITY

3.1 The Paradigm Shift: Electronic Records as Primary Evidence

The Bharatiya Sakshya Adhiniyam (BSA), 2023, flips the old approach to digital evidence in India on its head. Where the Indian Evidence Act of 1872 mostly treated electronic records as secondary evidence always tied up with the sometimes-confusing rules of Section 65B the BSA goes straight to the point. It makes digital records primary evidence under Section 57. Now, the law's definition of a "document" isn't stuck in the paper age. It covers everything from data on smartphones and laptops to information stored in semiconductor memory. The BSA finally acknowledges that, in today's world, a digital footprint is as real as a stack of files. But these records officially count as primary evidence,[532] the law still insists on strict certification under Section 63. So, we're left with a strange contradiction digital evidence gets top status, but the old hurdles aren't gone. Future court decisions will have to sort out this tension.

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[530] Section 187, Bharatiya Nagarik Suraksha Sanhita, 2023; *Critical Analysis on Section 187 of BNSS*, International Journal of Law Management & Humanities.

[531] Section 193, Bharatiya Nagarik Suraksha Sanhita, 2023 (mandating 90-day progress reports to victims and strict timelines for charge sheets).

[532] *The-Bharatiya-Sakshya-Adhiniyam-2023.pdf*, International Journal of Law Management & Humanities (2025)

3.2 The Dual-Certification Regime: Section 63 and the Expert Mandate

To protect the integrity of evidence, the BSA doesn't just stop at recognizing digital records[533]. It introduces a tougher authentication process under Section 63.[534] Now, every electronic record needs a certificate signed by two people first, the person in charge of the device, and second, an independent expert. This "Expert Mandate" comes straight out of worries about tampering, deepfakes, and all the ways digital evidence can be manipulated. But this extra layer of "Procedural Rigor" could end up clogging the system. With cybercrime cases rising fast across the country, there just aren't enough forensic experts and labs to keep up with the demand for these certificates[535]. So, unless India seriously upgrades its forensic infrastructure, the push for perfect integrity could backfire. Instead of getting justice, cases might get stuck or thrown out on technicalities.

3.3 Forensic Reliability and the "Chain of Custody" Challenge

Trust in digital evidence depends on the chain of custody the clear, step-by-step record of who handled the evidence from the moment it's seized until it lands in court. The BSA and BNSS now require cryptographic tools like hash values (think SHA-256) to act as digital fingerprints. If the hash matches, the data's untampered. But the reality on the ground isn't so smooth.[536] Many police units, especially in smaller towns, just don't have the training or resources to handle digital evidence correctly. Data gets corrupted. Sometimes, prosecutors lean too heavily on whatever the software spits out, skipping proper checks. If courts don't stick to the "Cautionary Rule" set out in Anvar P.V. v. P.K. Basheer, making sure tech is a tool, not a shortcut procedural fairness goes out the window.[537]

3.4 Expansion of Oral Evidence and the "Virtual Courtroom"

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[533] Section 63, Bharatiya Sakshya Adhiniyam, 2023; *see also* "Electronic Evidence under BSA 2023: Challenges and Judicial Interpretations," *IJALR* (2025).
[534] Section 63(4), Bharatiya Sakshya Adhiniyam, 2023; *Cybercrime Investigations and Admissibility of Electronic Evidence in India*, Journal of Forensic Jurisprudence
[535] Section 2(e), Bharatiya Sakshya Adhiniyam, 2023; *Electronic Evidence*, cdnbbsr.s3waas.gov.in (noting the inclusion of electronic statements as oral evidence).

[536] Digital Personal Data Protection Act, 2023; *see also* Naavi.org, "Modernising Evidence Law: The BSA in the Digital Age".
[537] *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal*, (2020) 7 SCC 1

The BSA also shakes up how oral evidence works. Now, witnesses, victims, or even the accused can testify over video call.[538] This change isn't just about convenience it means people can participate in trials without the hassle or fear of showing up in person.[539] The Supreme Court even pointed out that being able to replay video testimony helps cross-examination. But opening up the "virtual courtroom" brings new risks, especially around privacy. As investigations rely more on digital trails, police officers become "Data Fiduciaries," responsible for handling sensitive information.[540] All digital testimony has to meet the privacy standards set by the Digital Personal Data Protection Act, 2023. If the system slips up, and private data leaks, it's not just a technical glitch it's a breach of the right to a fair trial under Article 21.

CHAPTER IV: THE CHALLENGE OF IMPLEMENTATION AND THE ROAD TO CONSTITUTIONAL REFORMATION

4.1 Institutional Readiness and the Infrastructure Gap

Switching from colonial-era laws to the new Bharatiya Nagarik Suraksha Sanhita (BNSS) and Bharatiya Sakshya Adhiniyam (BSA) really comes down to how ready our institutions are. The laws call for big changes things like mandatory forensic exams for serious crimes. But the current physical infrastructure of our police and courts just isn't up to the task. The discussions keep circling back to the same real-world issues training, new tech, and whether the system can actually handle these upgrades. Without a big boost in the number of forensic labs and skilled personnel, requirements like forensic reports and digital evidence certification will just clog up the system and create the very delays these reforms were meant to fix.[541] The digital divide throws another wrench into things. Rural law enforcement often doesn't have the hardware or fast internet needed for things like mandatory video recording or online FIRs.[542]

4.2 Training Needs and Capacity Building for Stakeholders

Rolling out a reform this big isn't just about changing the rules it means everyone involved, from cops to prosecutors to judges and lawyers, needs a total reset. The capacity building and

[538] *Impact of E-Records as Evidence in the Judicial System*, ResearchGate (2025)
[539] Shortcomings of the Bharatiya Sakshya Adhiniyam, 2023: Challenges for Courts, Prisons, and Police," *IJFMR* (2024).
[540] *Electronic Evidence Under Bharatiya Sakshya Adhiniyam: A Critical Analysis*, IJLLR (2026).

[541] Ministry of Home Affairs, *National Forensic Infrastructure Enhancement Scheme (NFIES) Guidelines* (June 2024) (Approving ₹2254.43 crore for expanding forensic laboratories to meet statutory mandates).
[542] *V. Senthil Balaji v State Represented by Deputy Director* (2023) SCC OnLine SC 934

ongoing training aren't optional. For legal professionals, it's about getting comfortable with new rules especially the tougher standards for electronic evidence under the BSA, like the double-check for digital records. For law enforcement, it's a shift from old-school investigations to a digital-first mindset, where protecting the integrity of electronic evidence is front and center.[543] The training shouldn't just cover what's different in the books. It needs to focus on how these laws actually work or don't on the ground.

4.3 Safeguarding Democratic Accountability and Constitutional Tenets

The real test for India's new criminal laws isn't just whether they break from the past, but whether they protect basic rights and hold up democratic values. The BNSS giving more power to the state and allowing longer police custody, the rights guaranteed by Articles 20 and 21 could take a hit. If we bring in fancy tech without matching safeguards, we risk valuing speed over justice, especially for people who are already vulnerable or marginalized. To keep things from sliding into procedural chaos, this study lays out three steps: First, we need regular audits to make sure new laws stick to constitutional principles. Second, tech-driven investigations must have clear, tamper-proof procedures for collecting and storing digital evidence, so we don't end up relying blindly on algorithms or losing the chain of custody. Third, real reform needs real investment lawmakers have to back these changes with the budget and infrastructure to make them stick.[544] Thus, the BNS, BNSS, and BSA are more than just a break from colonial laws they're a chance to rethink how justice works in practice. But passing new laws isn't enough, how we handle day-to-day prosecutions will decide if these reforms matter. The shift from colonial rules to something that fits today's world isn't just for lawmakers it's on all of us. The technology actually improves fairness and accountability, not just efficiency. It's going to take constant vigilance, regular judicial review, and a willingness to keep rethinking policy. Only then can India genuinely reform its criminal justice system to meet constitutional ideals.

[543] Standing Committee on Home Affairs, *Report on the Bharatiya Nagarik Suraksha Sanhita, 2023* (Report No. 248, 2023) 22

[544] Ministry of Home Affairs, *Press Release: Union Home Minister on Three New Criminal Laws* (PIB, 1 July 2024)

CHAPTER V: STATISTICAL INFERENCE QUANTIFYING THE SYSTEMIC CHALLENGE (NCRB & IJR 2024-25)

5.1 The Pendency Paradox and Conviction Deficit

The criminal justice system in the numbers shows the massive gap between what's promised and what people actually get. The NCRB's 2023 report and the latest India Justice Report for 2025 both say the conviction rate for IPC/BNS crimes sits at around 54%[545]. That sounds okay until you realize police file charge-sheets in over 72% of cases.[546] And when you look at serious crimes like rape or murder, convictions drop even lower sometimes just 20–36% in some states. Meanwhile, as of March 2025, the Supreme Court alone has a backlog of more than 88,000 cases. But nearly 88% of pending cases are stuck in District Courts. This kind of "statistical stagnation" is exactly why the BNSS pushes for trials to happen on a tight schedule. But unless every court clears as many cases as it gets something the Supreme Court almost manages at 104%, but lower courts don't the idea of speeding up justice stays more hope than reality.[547]

5.2 Forensic Bottlenecks: The Infrastructure Gap

Now, the BSA specifies the need for forensic evidence for serious crimes. Except, according to a 2025 study from the Bureau of Police Research and Development, India barely has enough forensic DNA labs to keep up. As of recent surveys, there are only nine major labs in the whole country. [548]That means forensic reports usually take 12 to 18 months just to reach the court. And here's the kicker right now, about 30% of cases where someone gets acquitted based on forensics come down to "procedural lapses" in handling the evidence. To actually meet the new BSA requirements, India's digital forensics market needs to explode from ₹1,603 crore in 2024 all the way to ₹11,829 crore by 2030[549], which is a whopping 40% annual growth. So, the law keeps racing ahead, but the labs just can't keep up. That's how you end up with a "scientific lag" in the whole justice system.

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[545] National Crime Records Bureau (NCRB), *Crime in India 2023*, Ministry of Home Affairs, Government of India (published December 2024).
[546] *India Justice Report (IJR) 2025: Ranking Police, Judiciary, Prisons and Legal Aid*, Tata Trusts in collaboration with Centre for Social Justice, Common Cause, and CHRI (February 2025)
[547] Supreme Court of India, *National Judicial Data Grid (NJDG)*, Statistics as of March 31, 2025. Accessible at: njdg.ecourts.gov.in.
[548] Bureau of Police Research and Development (BPR&D), *Status of Forensic Science Laboratories in India: A Comprehensive Study on DNA Backlogs (2022-2025)*, Ministry of Home Affairs, New Delhi (2025).
[549] *Indian Digital Forensics Market Outlook 2024-2030*, Data Security Council of India (DSCI) and Research & Markets Report, published October 2024.

Ultimately, the "Justice Gap" will only close when the rate of forensic and judicial capacity-building matches the accelerated timelines of the new procedural codes. Without this alignment, the "Pendency Paradox" will persist, merely shifting the bottleneck from the courtroom to the laboratory.

CHAPTER VI: CONCLUSION & POLICY RECOMMENDATIONS

Switching from the colonial-era IPC, CrPC, and IEA to the new BNS, BNSS, and BSA is a bold move. It's not just about rewriting the law it's an ambitious bet on both shaking off colonial baggage and bringing in new tech to shift the focus from just punishing people to actually delivering justice. But there's a huge gap between what the law promises and what the system can actually deliver. They're pushing for digital everything and strict deadlines, but the reality is, courts are understaffed, forensic teams are stretched thin, and folks in rural areas still struggle with basic digital skills. Changing the language of the law from English to Sanskrit won't cut it. What really needs to change is the mindset. India has to stop thinking like a police state and start putting ordinary people at the center. If the government gives police more power to hold people in custody and doesn't fix the lag in forensics, and if there's no serious judicial oversight, these new laws will just polish up the old system without fixing its real problems. At the end of the day, real justice isn't about rushing to a verdict. It's about making sure the process is fair and solid, every step of the way.

Set up district-level Digital First-Responder Units (CDFRUs) to handle BSA Section 63 certifications right away. This cuts out the usual 12-18 month wait for lab results. keeping people in police custody shouldn't be the norm. Magistrates should have to write up "Special Reasons" any time they want to extend custody. That way, we can stop custodial coercion before it starts. Bring digital legal help to rural areas by starting "Legal Aid Digital Hubs" in Panchayats. About 40% of people still deal with the digital divide, so these hubs can help them file e-FIRs and access virtual courts (Nyaya Shruti) without the usual hassle. Build an "AI Transparency Code" into the BNSS. Predictive policing tools should never run on autopilot. Always keep a human in the loop to check for bias and make sure we don't just repeat past mistakes. Focus on building up our courts, too. Start with a "Judicial Impact Assessment" and fast-track hiring so courts can actually hit a 100% Case Clearance Rate (CCR) and meet the new 30-day judgment deadlines.

THEME IV: EVIDENTIARY STANDARDS UNDER THE BHARATIYA SAKSHYA ADHINIYAM (BSA)

RETHINKING THE SYMBOLIC REFORM OF THE BHARATHIYA SAKSHIYA ADHINIYAM: A CRITICAL ANALYSIS ON MANDATORY CERTIFICATION OF ELECTRONIC EVIDENCE

Mr. Aravind N P[550]

INTRODUCTION

In modern digital era, judiciary has witnessed an enlarged amount of evolving digital technologies which reshape the socio-economic and legal connections.[551]Electronic media connections including social media have become the unavoidable part in the personal life as well as in professional life. For the criminal justice system, technological developments cause a critical rise in crimes because of this.[552] In this regard, the electronic evidence is intangible, mutable and also difficult to manipulation which makes struggle for the traditionally following evidentiary documentations.[553]

To mitigate these challenges caused by the digital technologies, the Indian legal system tries to solve through modernizing the evidentiary standards to ensure the judicial process efficient and effective in this digitized world. The inadequate efforts of judicial system have established the complexities in the digital evidence in proving the authenticity, reliability and integrity of the digital records. To tackle this procedural hardness, recently the legislation has made development like mechanism which formalizes proves of verification and certification of electronic records. This creates the tension between the procedural difficulty and maintenance of the evidentiary framework because of the mandatory certification process. This is done by the legislation only to ensure the electronic records are genuine, unaltered and verifiable one. This is to ensure that our Indian legal framework is in alignment with the international standard in the case of digital evidence management.[554] But the practical implementation of this requirement causes the judicial debate despite the intention of

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[551]Ministry of Home Affairs, Cybercrime Statistics 2023 (MHA Report, 2023) 4-6.
[552] Eoghan Casey, Digital Evidence and Computer Crime (erd edn, Academic Press 2011) 12-25.
[553] Stephen Mason and Daniel Seng (eds), *Electronic Evidence* (4th edn, University of London Press 2017) ch 3.
[554] Nayan Joshi, *Electronic Evidence* (2nd edn, Lawmann 2025) 101-118.

legislation is clear. This issue like third party custodianship, technical intricacy, resource constraints cause the head ache to the judicial authorities as well as the litigants with this mandatory certification procedure.[555]

Due to some procedural complexities, it is impossible to provide formal certification in the cases where the digital evidence may situate outside the country in the encrypted formats.[556] Which results in the exclusion of important and reliable evidence, it further causes in impeding substantive justice. In the meantime, scholars and jurists have suggested for a flexible and possible approach for corroborative evidence and technology assisted verification techniques for the certification process.[557] Regarding this scenario, this paper critically analyse the normative, doctrinal and judicial interpretation dimensions of this mandatory certificate process under BSA, 2023. It aims to question whether this formal certification process aligns with the aim of achieving the justice through the evidentiary reliability. This study going to analyse the statutory and jurisprudential analysis aims to suggest the frameworks where procedural formalism and practical feasibility is align in a harmonious manner.[558] For the rapid digitizing society like India, this study is important, because to maintain the public trust and also easing the effective justice administration in this digital driven world.

I.NORMATIVE AND DOCTRINAL FRAMEWORK GOVERNING ELECTRONIC EVIDENCE UNDER THE BHARATHIYA SAKSHYA ADHINIYAM

This evolution of digital technologies has changed the legal landscape, notably in the evidentiary practices. Electronic evidences, like emails, social media data and records, cloud-storage documents and transaction in digital mode have become the vital in the criminal and civil adjudication. Electronic records are different from the traditional evidence because it is vulnerable to tampering, easy for replication and mutable so it poses a risk for courts in establishing integrity, authenticity and reliability.[559] Initially this electronic evidence comes under the Indian Evidence Act (IEA), 1872, but this is not dealt about digital records. This Act

[555] Ministry of Home Affairs, *National Policy on Digital Forensic* (Draft 2024) para 5.1.
[556] Akash Tripathi, "Digital Proof on Trial: An Analysis of Section 65B and Admissibility' (2025) 8(2) *International Journal of Law Management & Humanitiess* 5033.
[557] Sandra Jini Saju, 'Anvar P.V. v. P.K.Basheer & Ors: Section 65A and 65B – Admissibility of Electronic Records' (2023) 3(1) *Indian Journal of Legal Review* 579.
[558] Eoghan Casey, *Digital Evidence and Computer Crime* (3rd edn, Academia Press 2011) 12-25.
[559] Indian Evidence Act 1872 ss 65A, 65B.

later amended to add Sections like 65A and 65B for setting the rules for admissibility, certification and authenticity of electronic records. This amendment paves the way for the formalizing the electronic evidence in align with international standards on digital proof. To support this, the Information Technology Act, 2000 strengthened this by recognizing the digital signatures, electronic records and also providing clear rules for the courts to adjudicate.[560]

The newly enacted BSA, 2023, further consolidated the rules through Section 63(4) by mandating certification of electronic evidence before its admission in court. The intention of the legislature is nothing but to ensure reliability. It shows doctrinal emphasis on procedural struggle over simple acceptance.[561] Practically, scholars have marked the distinction between the primary electronic evidence (original data files) and secondary electronic evidence (copies, printouts or derivative records). This classification highlights the requirements of certificate which focus on authenticating the secondary evidence, because the risk of alter is comparatively higher. Though it is an important and reliable record, if failure to produce the certificate which results in exclusion of the record.[562] This stringent procedure may cause harm for the substantive justice, when obtaining the certificates are technically or practically not possible or challengeable. For example, digital evidence may locate in the third-party servers in overseas, which may be encrypted or be generated by the devices locating outside the judicial reach, makes the certification process impossible or burdensome. This kind of practical constraints causes the tension between the form and substance in the evidentiary law.[563]

Moreover, Section 63(4) functions within the broader doctrinal regime that enhances authenticity, integrity and judicial efficiency. To reduce the need for cross-examination and technical expert verification, the legislation intentionally placed this certification process for formal assurance of reliability. These make the wider debate whether this approach prioritizes the procedural correctness over substantive value of evidence.[564] The literature on electronic evidence steadily enhances the need for a balance. Stephen Mason and Daniel Sed noted that

[560] Bharatiya Sakhya Adhiniyam 2023 ss 63(4), 63(1)(b); Ministry of Law and Justice, *BSA Legislative Mechanism* (2023) para 2.5-2.8.
[561] Stephen Mason and Daniel Seng (eds), *Electronic Evidence* (4th edn, University of London Press 2017) chs 1-3.
[562] Akash Tripathi, 'Digital Proof o Trial: An Analysis of Section 65B' (2025) 8(2) *International Journal of Law Management & Humanities* 5033.
[563] Sandra Jini Saju 'Anvar.P.V. v. P.K.Basheer & Ors' (2023) 3(1) *Indian Journal of Legal Review* 579.
[564] Stephen Mason and Daniel Seng (n4) ch6.

formal rule must collaborate with judicial discretion where courts find difficulty in encountering the evidence is technically reliable but procedurally non-compliant.[565] Likewise, Eoghan Casey indicates the practical difficulties of digital records and suggests a method to ensure the reliability through combination of certification, corroboration and forensic validation process.[566]

These scholarly views show an important legal gap within the framework which governed the electronic evidence. While Section 63(4) of the BSA, 2023 relies upon the mandatory certification as a rule for admissibility, the law did not establish a procedural mechanism for addressing the situation in which electronic evidence may be technically reliable but practically not able to follow the defined requirements for certification. This normative gap shows an issue between the procedural rigorism and substantive value of the records. For recognizing this legal gap, this present paper aims to examine the interpretative views of the courts also analyse the real constraints which evolve in the application of this mandatory certification in the background of electronic evidence.

II. JUDICIAL CONSTRUCTION OF MANDATORY CERTIFICATION: INTERPRETATIVE TRENDS AND PRACTICAL CONSTRAINTS

For shaping the practical operation of Section 63(4), the role of judicial interpretation is vital. Courts must maintain the equilibrium of statutory mandate for mandatory certification and the challenging nature of obtaining the electronic evidence. Initially in many cases, the courts have shown an inconsistency regarding the uncertainty in applying the certification requirement.[567] In the landmark case of *Anvar P.V. v. P.K. Basheer*, discussed that for establishing the strict compliance standard, no electronic evidence is admitted in the court without proper certification. The court clarified that the intention behind the Section 65B of IEA, was to ensure the reliability and authenticity and judicial clemency in certification may compromise the evidentiary value.[568] Subsequent precedents, including *Arjun Panditrao khotkar v. Kailash Kushanrao Gorantyal*, clarified that minor procedural lapse or delay in the process of certification should not undermine or remove the evidentiary value. Even though

[565] Eoghan Casey (n 1) 45-62.
[566] Goutam Bhaduri, 'Electronic Evidence After Anvar.P.V. – A Critical Study' (2021) 6 *Indian Journal of Law and Technology* 47.
[567] *Anvar. P.V. v. P.K.Basheer* (2014) 10 SCC 473; Akash Tripathi (n 5).
[568] *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal* (2020) 8 SCC 1; Sandra Jini Saju (n 6).

the court has confirmed the mandatory of certificate for admissibility, it clearly allows for remedial measures and limited flexibility.[569]

Although the judicial guidance is present, the lower courts have still faced constraints regarding the electronic evidence, which operates from the third-party servers, offshore repositories and encrypted systems. This complicating the certification process. Also creates a stiffness between the procedural rigorism and access to justice, rarely it leads to exclusion of credible evidence.[570] Practical difficulties go beyond the courts. Law enforcement agencies, forensics, litigants face the challenges in securing these certified records. Technical expertise, infrastructure and proper access to the custodial are often insufficient, intensifying delays and procedural difficulties. [571]

Due to the strict compliance of this requirement for certificates, Judicial authorities face an important challenge in smearing Section 65B of the IEA because of exclusion of credible evidence. Interpretational ambiguities like timing, format and certificate issuer, particularly when the evidence was devised from the third-party server make more complicating the proceedings. These make the delay in the adjudicated and also complicating the evidentiary analyses which highlights the rigidity between procedural requirements and substantive value of evidence.

In the newly enacted Section 63(4) of BSA, the certification remains mandatory, courts continue to witness the challenges in the practical and technological constraints.[572] In this modern digital world, it is slightly complex to identify the appropriate certifying authority where the system involves encryption, restricted admin access and distributed storage architectures. These factors result in the procedural delays in court proceedings, because trials are postponed due to these delays. Victims also face the challenges to get the authenticity through the formal certificate for electronic communications like emails, screenshots. Also in

[569] NetLawMan, 'Admissibility of Electronic Evidence' https://www.netlawman.co.in/ia/electronic-evidence accessed 14 March 2026.
[570] Ministry of Home Affairs, *Naational Plicy on Digital Forensics* (Draft 2024) para 5.1.
[571] *Bharathiya Sakshya Adhniyam 2023* ss 63(4), 63(1)(b); *Ministry of Home Affairs, National Policy on Digital Forensics (Draft 2024)* para 5.1; Akash Tripathi, 'Digital Proof on Trial: An Analysis of Section 65B' (2025) 8(2) *International Journal of Law Management & Humanities* 5033.
[572] International Journal of Advances Legal Research and Analysis, Electronic Evidence under BSA 2023: Challengess and Judicial Interpretations 5(3) ISSN:2582-7340 (discussing procedural hurdles and delays in obtaining certificates under the new digital evidence regime)

some other cases, the getting of certificate is practically impossible due to the reasons like the original device may lost, damaged, replaced or tampered.

These practical difficulties paves way for the systemic pressures in the criminal justice system.[573] Due to the lack of technical support or specialized infrastructure to handle the technically complexed electronic records, certifying authorities suffered difficulties. When the involvement third party servers or encrypted occurs, it creates a strain in the discharge of their duties because. The time involvement in obtaining the certificate differs from one place to another for example in rural areas where the technological infrastructure is limited time taken is comparatively higher than the semi urban and in urban areas.[574]

These delays create an unavoidable substantial difficulty for the legal practitioners, who is the responsible person to submit the document before the courts, particularly in cases where victims seeking the speedy justice. This prolonged delay may also affect the accused persons, whose legal status remains questionable until the production of certificate and other reliable documents before the court. This kind of growing pressures creates a concern regarding the procedural efficiency and fairness with the Indian criminal jurisprudence. At the same time, this critique is not to oppose the procedure of mandatory certification, which remains an important part and parcel in the evidentiary framework to ensure the reliability and authenticity. But it stresses the need for improvement in the infrastructure, technological efficiency and admin support to ease the process of certification in an effective manner.[575]

To solve this dispute between the evidentiary integrity and practical constraints, the judicial authorities and legal commentators have suggested for the flexible interpretative approach. This approach allows the courts to maintain the procedural constraints without undermining the substantive value of justice through the incorporation of corroborative evidence, forensic validation and expert opinion in align with the formal certification process. By acknowledging these practical constraints which was faced by the litigants, legal practitioners, certifying authorities, the flexibility needs to merge with the formal requirements of Section 63(4). This emphasize that the procedural formalism should not override the substantive objective of

[573] Lawful Legal, *Digital Evidence and its Admissibility in Indian Courts* (describing procedural hurdles and delays in obtaining certificates from the third-party platforms and cloud services stored abroad).
[574] Legal Service India, *Shortcomings of the Bharatiya Saskhiya Adhiniyam, 2023: Challenges for Courts, Prisons and Police* (on infrastructural and administrative burdens imposed by digital evidence requirements).
[575] Stephen Mason and Daniel Seng (n 7) ch 6; Vaibha Chadha and Janani Sivaraman (n 9).

justice, especially in the techno-driven world.[576] Therefore the jurisprudential interpretation of Section 63(4) shows that the cooperation between the intention of the legislation and also practical difficulties of electronic evidence. By understanding this analysis, it is very much important for the development of framework which holds both evidentiary integrity and practical possibility.[577] This procedural and evidentiary challenges highlight the restrictions of a solely formalistic approach. Subsequently, there is a domineering authoritative to explore a multidisciplinary approach, victim-centric framework which will effectively deals with the complexities of the electronic evidence in the growing cybercrime adjudication in this country.

III. TOWARDS A MULTIDISCIPLINARY AND VICTIM-CENTRIC FRAMEWORK FOR ELECTRONIC EVIDENCE IN CYBERCRIME ADJUDICATION IN INDIA

The procedural difficulties is in align with the mandatory certification of the electronic evidence stresses the need for an integrated approach and context-sensitive framework. Th comparative analysis of Section 65B of IEA, 1872 and the newer Section 63(4) of BSA 2023 shows that the procedural complexities have cleared in the newer one but the practical challenges still exist. Courts continues to maintain the balance for the adjudication of electronic evidence through balancing the strict certification requirements and practical realities.[578] In this digital world, the investigation containing electronic records may exist in the encrypted formats, ephemeral communications or decentralized storage systems. This may make the process rigid. Such rigidity carries the tangible ill effects for the victims, who access to timely and speedy remedies may be obstruct, when evidence is rejected or delayed.[579] Furthermore the victims of cybercrimes may face harm larger because of this procedural rigidity, because here there is an need for timely intervention.[580] In this context, it becomes seeming that the balance of procedural integrity with practical feasibility is important to maintain both the authenticity of evidence and equitable access to justice.

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[576] Law Commission of India, *report no 270: Amendments to Criminal Law Relating to Electronic Evidence* (2017) paras 10.11-10.14.
[577] *Anvar P.V. v. P.K.Basheer* (2014) 10 SCC 473; Bharatiya Sakshya Adhiniyam 2023 ss 63(4), 63(1)(b); Goutam Bhaduri, 'Electronic Evidence After Anvar P.V. – A Critical Study' (2021) 6 *Indian Journal of Law and Technology*
[578] Shweta Singh, 'Victim Rights and Digital Evidence Challenges in Cybercrime' (2022) 34 Cyber LJ 45.
[579] K. Sharma, 'Impact of Procedural Barriers on Cybercrime Victims' (2021) 29 IJCL 67.
[580] Bar Council of India, *Manual on Digital Evidence and Judicial Training* (2023) 12.

The challenges mentioned above points out the doctrinal gap within the governance of digital evidentiary framework. While Section 63(4) of BSA, 2023 aims to ensure the authenticity and reliability of electronic material through the mandatory certification, the legislation not fully satisfied the circumstance where the digital evidence is technically sound but the practicality requires the formalities. As marked in the earlier discussion relating to the judicial interpretation, the absence of interim relief or mechanism creates a structural lacuna in this evidentiary law which governs the electronic proof. As a result, courts encountered challenges in balancing rigid compliances with the substantive value of reliable electronic records. For addressing this gap, this present paper analyses enhances the need for a multidisciplinary and victim-centric approach which will navigate these practical constraints while maintaining the basic integrity of the electronic evidence.

From a judicial viewpoint, enhancement of technological knowledge arises as a critical mechanism for witnessing these challenges. Acquaintance to digital forensics, cybercrime investigation methodologies and metadata validation eases more nuanced analysis of electronic evidence.[581] Without compromising the evidentiary standard to attain the justice, support needed from structured training programs, holistic manual for training programs, practical rules and guidelines on ethical consideration and procedural discretion.[582] Also there is an need for an advocate education including the awareness of these provisions and practical constraints associated in handling this digital evidence, which strengthens the litigation techniques and provide a way for the greater alignment between the procedural requirements and substantive justice.[583] Moreover, integrating steps to check the integrity and moral suggestions of handling the evidence can provide a more ethically strong framework for judicial and advocacy practice.[584]

In jurisprudential standpoint, aligning the victim-centric approach with the authenticity of electronic evidence is vital for positioning the evidentiary practices with the principles of equity and fairness. Where the reliable evidence is inadmissible due to the procedural rigidity there is an greater increase in cybercrime cases like identification theft, online fraud.[585] Intellectualizing approaches which allow contextual evaluation of authenticity and reliability

[581] M. Rao, 'Technical Advisory Panels for Digital Evidence' (2020) 18 J Cyber Forensics 101.
[582] S. Verma, 'Judicial Training and the Management of Digital Evidence' (2020) 16 IJLS 122.
[583] A. Kaur, 'Ethical Considerations in Electronic Evidence Handling' (2021) 12 JICL 56.
[584] R. Patel, 'Cybercrime Victimology and Evidentiary Challenges' (2020) 15 JCL 89.
[585] P. Chatterjee, 'Balancing Victim Rights and Procedural Rigor in Cyber Evidence' (2021) 22 ICJL 101.

through forensic verification, meta data analysis, expert opinion shows a shift towards procedural flexibility that preserves both substantive value and equitable redress.[586] Institutional and judicial understanding to victim experiences can emphasize the trust in the legal system and also ensure that procedural precautions do not unconsciously disadvantage to those most affected by cybercrime.[587]

Outside the judicial arena, systemic and educational interferences create an important mechanism for strengthening this procedural and evidentiary maintaining in electronic records. Implanting the cybercrime law, digital forensics and the evidentiary framework within legal prospectuses designs the students and practitioners with the intellectual and practical experience which is the requirements for this arising digital world challenges.[588] Initiatives could include dedicated modules, practical exercises and case imitations which shows the procedural constraints and technological details.[589] Moreover, the creation of cyber-evidence benches, technical advisory mechanisms and standards for blockchain can emphasize the judicial adaptability which ensures that electronic records retain authenticity and reliability without dependence on inflexible certification processes.

CONCLUSION

A critical assessment of this mandatory certification requirement under the Section 63(4) show that the purpose of this legislation is for safeguarding the authenticity. Still, it remains substantively valid, but the strict procedures cause the obstruction for the broader objectives of justice. It is inspired based on the former Section 65B of IEA, 1872, to ensure the genuine, unaltered and reliable one. On comparing both the provision like former 65B and newer 63(4) show that still the operational challenges persist in areas like third party servers, encrypted platforms or in the decentralized systems.[590]

It obviously shows the structural limitation present in the current existing evidentiary legal framework. Even though the Section 63(4) founds mandatary certification to ensure the authenticity and credibility of electronic records, it does not provide a solution for condition

[586] N. Das, 'Digital Fraud, Evidence and Access to Justice' (2022) 19 CJL 34.
[587] A. Singh, 'Integrating Cybercrime and Digital Forensics in Legal Education' (2020) 18 ILR 200.
[588] S. Roy, 'Emerging Challenges in Electronic Evidence Education" (2021) 21 JICL 67.
[589] Bar Council of India, *Curriculum Reform in Cyber Law and Forensics (2022).*
[590] Akash Tripathi, Digital Proof on Trial: An Analysis of Section 65B and Admissibility of Electronic Evidence in Trial Court (2025) 8 *International Journal of Law Management & Humanities* 5033-5044 (discussing certification and authenticity requirements under Section 65B of the Indian Evidence Act and its modern equivalents).

where evidence is technically reliable but practically not able to satisfy the procedural requirements. As mentioned in the judicial precedents and also in the analyses by academics, this lacuna mandates the courts to deal with the stringent procedural compliance and the appreciating the evidentiary value. To address this deficit innovative, multi-disciplinary approaches which align with the technological expertise, forensic validation and victim centric consideration are very much needed to ensure the integrity of the evidence also for non-obstruction of access to justice.

Though, doctrinal persistence is inevitable for relying upon it for the formal certification process. But, it is practically challenging to certify in statutory arrangement. Without enhancing the substantive truth finding process, the rigid formalism will create the procedural barriers. Litigants and judicial authorities highlight the certification requirement should collaborate with the evaluative conditions such as metadata verification, expert forensic analysis and corroborative evidence for ensuring the admissibility of electronic record.[591] The rigid procedures results in the procedural constrains without certainly enhancing the substantive truth finding process.[592]

The distinct nature of electronic evidence is mutability, reproducibility and vulnerability for tampering emphasize the need for an effective evidentiary framework.[593] Though certification plays an important role in the area of authentication, but it should be considered align with some other indicators of reliability such as expert validated forensic reports, secure audit trails and cryptographic has values.[594] A multilayered tiered approach allows the courts to uphold the evidentiary standard also avoiding the undue delay and hurdles that may exclude the justice. Established measures like judicial training, standardized practise guidelines, accredited and well infrastructure forensic support and large number of technical experts can further elaborate and ensure that procedural formalism is balanced and align with the equitable access to justice in this modern digital world.

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[591] Nibras Salim Khudhair, 'Revisiting the Admissibility of Electronic Evidence: Indian Jurisdictions & Notes from Other Countries' (2021) *Psychology and Education Journal* (arguing that strict compliance may exclude large amounts of authentic evidence).)

[592] *Paper in the Age of Digital: The Curious Case of 65B Certificates in India (2024) Asian Journal of Law and Society* (examining how certification functions as a gatekeeping device in practice).

[593] *Revisiting the Relevancy, Reliability and Acceptability of Electronic Evidence (2025) International Education & Research Journal* (analysing core challenges of digital evidence admissibility and reliability).

[594] Tripathi (n 1) (noting technical indicators of reliability alongside procedural compliance).

CONTEMPORARY CHALLENGES IN THE RELEVANCY AND ADMISSIBILITY OF ELECTRONIC EVIDENCE IN THE ERA OF ARTIFICIAL INTELLIGENCE

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I. Introduction

The BSA 2023, enacted along with the BNS and the BNSS, replaced colonial Indian Evidence Act, 1872 with a framework projected as democratic, Indianized and technology-driven. Electronic documents such as mails, logs from servers, messages in digital form, audio, video and other computer-generated and device-stored data are no longer peripheral and they are at the centre of investigation and trial as they are recognized as primary evidence rather than secondary. Yet contemporary Artificial Intelligence (AI), especially generative systems, increasingly undermines the originality and authenticity of electronic evidence through synthetically generated data popularly known as "*deepfakes"*. This paper hooks upon the sub-theme[596] under Theme IV[597] argues that the BSA's inherited admissibility logic which includes certification, chain-of-custody, forensic imaging does not match AI's capacity to fabricate convincing media at source, allowing content to be formally "admissible" but substantively false. Indian courts have begun issuing orders in deepfake matters often via injunction and takedown orders, and foreign courts have already encountered cases where parties submitted manipulated and deepfake-style audio or video as evidence and only forensic scrutiny exposed falsity. The paper therefore contends that high-risk categories of electronic evidence require layered admissibility and proposes a constitutionally compatible model treating the generative AI systems as a form of fictional legal person for attaching obligations which includes watermarking, logging, refusal mechanisms with evidentiary consequences, along with a specialised Cyber Enforcement Directorate to proactively monitor deepfakes, audit compliance, investigate malicious creators and assist courts as an advisory and enforcement agency ensuring the fundamental rights of the victims are safeguarded naturally while imposing reasonable restrictions on the Generative AI systems.

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II. Electronic Evidence in the New Criminal Law Framework

Under the Section 63 of BSA along with the BNS and BNSS that aligns substantive offences, procedure and evidence with realities of criminal justice system. In this tripartite framework, technology is not incidental but integral and occupies the centre stage of the criminal justice system. The BNSS provides for e-FIRs, electronic service of summons, video-recorded statements and digital transmission of case records. The BNS introduces new offence definitions that explicitly reference electronic communication and cyber-enabled conduct, and the BSA in turn, supplies the evidentiary backbone for all this digitalised process. Under BSA, electronic records are framed as full-fledged documents and the law conceptualises them not merely as copies of underlying paper documents, but as original sources of information in their own right. For example, an email stored on a server, a digital message in an application database, a CCTV clip on a hard drive or an audio file on a phone may themselves be primary evidence of facts in issue. This recognition is crucial because many events, especially online transactions and communications, exist only in electronic form and have no analogue counterpart. For a long time, courts have struggled to figure out how much they can trust digital records. Under the old Section 65B of the Evidence Act, you had to provide a specific certificate to prove where a file came from and that the device used was working right. Even though several major court rulings tried to clarify these rules, they all admitted that digital data is way too easy to mess with. Now, the new BSA keeps the idea that digital evidence needs extra scrutiny, but it completely misses the mark on modern AI. It doesn't say anything about deepfakes or how easily AI can create fake "evidence" that looks completely real

III. Deepfakes and the Structural Limits of Existing Safeguards

The problem with our current legal rules for digital evidence is that they mostly worry about whether a file was tampered after it was found. We use things like certificates, forensic imaging, and chain-of-custody logs to prove that the video shown in court is an exact copy of what was on the phone. If those boxes are checked, the judge usually lets it in, and lawyers just argue over how much to trust it. Deepfakes completely break this system because they are manipulated at the very start. When AI creates a fake video—like a fabricated confession or a staged political speech—there is no "real-life" event to compare it to. The fake *is* the original. Once that AI-generated file is saved to a device, it gets a "clean" digital signature just like a real video. You can follow every rule in the BSA to prove the file hasn't been changed since it was saved, but that’s useless if the video was fake from the second it was created. Basically,

our laws are great at catching someone who edits a video, but they are totally blind to someone who creates one. Where such content is placed before a court, the formal tests of admissibility may be satisfied, but the underlying authenticity of the content remains in doubt and BSA cannot resolve this problem by itself and thus the challenge.

IV. Case Experience in India and Foreign

A. India Courts Confronting Deepfakes

Indian courts have already begun experiencing the disruptive potential of deepfakes in high-profile disputes. These cases directly illustrate how synthetically generated content creates confusion and foreshadow challenges that BSA-era criminal trials will face in the years ahead

1. Ankur Warikoo v. John Doe & Ors., 2025

The Court issued John Doe a broad injunction against persons unknown from misusing Ankur Warikoo's name, likeness, voice and image, including by AI or deepfake technology, and directed platform to remove access to specific infringing data with-in 36 hours. The court recorded that deepfake videos falsely depicted him promoting dubious WhatsApp groups promising insider stock tips, thereby misleading the public. The order recognises deepfakes as capable of creating realistic false attribution of voice, face and persona, treating synthetic media as a high-risk informational object needing urgent containment.

2. Bhagwant Mann Deepfake case.,2025

Punjab Police registered an FIR relating to alleged AI-generated vulgar content involving the Chief Minister, Mohali court subsequently ordered online platforms to remove or block such content within a short timeframe. The case shows how deepfakes quickly become criminal-law material through FIR, investigation and judicial directions, meaning that the same synthetic media ecosystem will inevitably flow into evidentiary disputes.

3. Celebrity deepfake injunction line of cases

Indian High Courts have, in a series of personality-rights suits, confronted AI-generated images and videos that falsely depict celebrities as having endorsed products or appeared in

objectionable content. In[598] the Delhi High Court restrained a range of defendants from using the celebrity's name, image, likeness, voice and signature gestures in AI-generated memes, GIFs and other content, treating such deepfake-style use as an violation of the right of publicity and a form of passing off. Similarly, in[599] the court issued an injunction against the unconsented commercial exploitation of Bachchan's name, voice and image, including through AI-assisted impersonation, and treated the entire world at large as bound by the order. More recently, actors such as N.T. Rama Rao Jr., R. Madhavan, Shilpa Shetty, Aishwarya Rai Bachchan and others have obtained urgent orders from the Courts directing platforms to remove AI-generated deepfake videos and images often sexually explicit or suggesting false endorsements and to disclose details of uploaders.

What these cases helps us understand is that Indian courts are deploying emergency remedies such as injunctions, takedown timelines and disclosure directions because deepfakes collapse the ordinary trust of that true video or audio. However, these remedies are still largely reactive and they do not provide a guardrail to safeguard the fundamental rights of the citizens by means of proactive measures

B. Foreign cases of Synthetically Generated Evidence Tendered and Exposed as False

4. UK Child Custody Dispute, Tailored Audio Submitted as Evidence (2024)

A UK child custody dispute involved a mother producing an audio file presented as proof that the father made direct violent threats. The experts examined the recording and found its edited after the sourced phone call, including insertion of words not used by the father. The report points out that the mother used software to piece together a file that looked legitimate. This case is a perfect example of how one side can present a recording that seems totally convincing on the surface. It's only when an expert digs into the original metadata that the fake is exposed. Unfortunately, our current legal system is still too reactive as it only looks for these issues after the "evidence" has already been submitted.

[598] *Anil Kapoor v Simply Life India* 2023 SCC OnLine Del 6914 (Del HC).
[599] *Amitabh Bachchan v Rajat Nagi* 2022 SCC OnLine Del 4110 (Del HC).

5. Mendones v. Cushman and Wakefield, Inc. (Cal. Super. Ct., 2025) AI Deepfake Videos Lead to Sanctions

California Court identified evidence submitted by plaintiffs was likely GenAI deepfakes that loops short video, monotoned robotic speech, and mouth movements did not sync the audio, and the matter resulted in huge sanctions. The reporting highlights a practical courtroom constraint which is that judges may spot deepfakes, but sophisticated submissions can demand expert resources, making structured admissibility standards and institutional support necessary

These examples show us the adversarial process confronting synthetic evidence inside the proof system where parties contest authenticity, experts parse metadata or artefacts, and courts impose sanctions for attempted fabrication

V. Relevance and Layered Admissibility of Electronic Evidence as a Risk based:

Given the demonstrated real-world entry of deepfakes into disputes, the paper proposes that courts classify certain electronic records as high-risk prone synthetic manipulation which includes non-consensual intimate imagery, confessional audio, motivated political speeches, chat threads, call recordings, and short viral videos of unclear origin and originator. The doctrinal claim is that they should trigger layered admissibility once authenticity is reasonably questioned. Layer 1 remains conventional which includes compliance with statutory requirements for electronic records such as certificate or proof of extraction, preservation, and chain-of-custody. Layer 2 is authenticity-centred scrutiny which includes provenance metadata checks, watermark or provenance verification where available, consistency checks with independent records such as server logs and platform records, and when necessary expert examination aimed at detecting AI generation artefacts or post-event fabrication.

The Indian cases[600] illustrate why this is necessary and shows how deepfakes can be engineered to mimic trusted voices and faces for fraud, meaning courts cannot equate realism

[600] *Ankur Warikoo v John Doe & Ors* (Del HC, 2025); *Bhagwant Mann Deepfake* case (Mohali court, 2025); *Anil Kapoor v Simply Life India* 2023 SCC OnLine Del 6914 (Del HC); *Amitabh Bachchan v Rajat Nagi* 2022 SCC OnLine Del 4110 (Del HC).

with reliability. While the Foreign cases[601] &[602] shows that the decisive turn often lies in metadata and forensic reconstruction exactly what Layer 2 should institutionalise

VI. MeitY's Deepfake Regulations and Why Bans Don't Work

MeitY's[603] deepfake-oriented obligations which includes labelling, metadata or provenance disclosures, and rapid takedown timelines for major intermediaries reflect a policy approach that is still largely reactive. Such duties are important for limiting harm and reducing circulation, but they do not prevent the creation of deepfakes, and they do not guarantee that deepfake-style files seized from private devices will carry reliable origin markers when later tendered as evidence. Outright bans on generative AI are neither feasible nor desirable because generative models have legitimate and economically valuable uses and because broad prohibitions would raise constitutional proportionality concerns while still being easy to evade via open-source and offline deployment. Global regulations[604] similarly lean toward risk-based approach and transparency duties rather than total bans. Hence that reactive IT-rules, duties do not solve the evidentiary authenticity problem inside criminal trials.

VII. Generative AI as Fictional Legal Person Obligations and Evidentiary Consequences

Within a constitutionally compatible framework to attach obligations, liabilities and impose reasonable restrictions, this paper proposes treating GenAI systems as a form of fictional legal person which is a regulatory construct, Which helps to narrow down the concerns to adapt a solution based approach and transform the Criminal Justice system to the contemporary technological advancements

The Indian law already recognises non-human entities such as companies[605], associations[606] and even deities[607] as legal persons capable of bearing rights and obligations.

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[601] Byron James, Deepfake Audio Evidence Used in UK Court to Discredit Father, CYFOR (Apr. 18, 2024)
[602] Mendones v. Cushman & Wakefield, Inc., No. 23CV028772 (Cal. Super. Ct. Alameda Cnty. Sept. 9, 2025)
[603] Ministry of Electronics & Info. Tech. (MeitY), *Draft Amendments to the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021* (Oct. 22, 2025)
[604] Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act), 2024 O.J. (L 206) 1
[605] Salomon v. A. Salomon & Co. Ltd., A.C. 22 (H.L.); Tata Eng'g & Locomotive Co. Ltd. v. State of Bihar, A.I.R. 1965 S.C. 40; Life Ins. Corp. of India v. Escorts Ltd., (1986) 1 S.C.C. 264 (India).
[606] Daman Singh v. State of Punjab, (1985) 2 S.C.C. 670 (India).
[607] Pramatha Nath Mullick v. Pradyumna Kumar Mullick, 52 I.A. 245 (P.C. 1925); M.Siddiq (D) Thr Lrs v. Mahant Suresh Das, (2019) 18 S.C.C. 1 (India); Shiromani Gurdwara Prabandhak Comm. v. Som Nath Dass, A.I.R. 2000 S.C. 1421 (India).

Under this model, GenAI systems used for image, audio and video by law to first embed tamper-resistant watermarking or provenance signatures in all outputs that recognizes the creator and reproducer of such contents, second maintain secure generation logs linking prompts and outputs to pinpoint source, third implement refusal mechanisms for synthetic depictions of identifiable individuals, motivated political speech, Deceptive marketing strategies, Manipulative techniques in high-risk contexts without verified consent, and fourth to Prepare and maintain detailed technical documentation for regulatory audits by an appropriate authority. Non-compliance should carry evidentiary consequences which means that courts may draw adverse inferences, demand stronger corroboration or impose stricter admissibility scrutiny when a party relies on media that should carry provenance markers but does not. This design links upstream technical obligations to downstream courtroom decision-making, helping courts decide not only whether a file is intact but whether it is credible on its face

VIII. Cyber Enforcement Directorate Proactive Monitoring and Expert Support

With All the emerging challenges with the GenAI's destructive capacities that infringes the Privacy, Dignity and Morality of Individual citizens which constitution guarantees, along with the cases experienced in India[608] and Abroad[609] shows that courts are being pushed into technical questions and they are not structurally equipped to resolve alone and also acknowledges broader limits of judicial time and technical capacity for deep authenticity analysis. With all the emerging challenges Therefore, the paper recommends incorporation of a specialised Cyber Enforcement Directorate(CED) to first proactively monitor deepfake trends and GenAI-driven cyber offences, second investigate and prosecute malicious deepfake creators such as extortion, fraud, impersonation and election interference, third audit GenAI systems for compliance with watermarking, logging and refusal obligations, and fourth assist courts with expert authenticity reports and testimony as both technical advisory and enforcement agency. Such a body would transform deepfake handling from scattered, reactive dispute management into a proactive, expert-driven enforcement which supports the evidentiary system, enabling the BSA's relevance and admissibility standards to function

[608] Ankur Warikoo v. John Doe & Ors., 2025; Bhagwant Mann Deepfake case.,2025; Anil Kapoor v. Simply Life India, 2023 SCC OnLine Del 6914; Amitabh Bachchan v. Rajat Nagi, 2022 SCC OnLine Del 4110;
[609] Byron James, Deepfake Audio Evidence Used in UK Court to Discredit Father, CYFOR (Apr. 18, 2024); Mendones v. Cushman & Wakefield, Inc., No. 23CV028772 (Cal. Super. Ct. Alameda Cnty. Sept. 9, 2025)

meaningfully in the Era of “deepfake”. Also the paper mandates the training of Judicial Department, Police Department and all other stakeholders on such problems and solutions for the efficiency in delivering Justice in such complicated aspects of Technology and Law.

IX. Conclusion

The BSA's elevation of electronic records as primary evidence can only deliver fair, technology-driven justice if courts can distinguish what merely appears to be electronic evidence from what deserves that status. The *“deepfakes”* already create real courtroom risk sometimes as emergency takedown disputes, sometimes as fabricated exhibits requiring expert debunking and they justify layered admissibility, AI-system obligations with evidentiary consequences, and an institutional CED to support Indian courts under the BSA. The success of India's new criminal law regime will ultimately depend on whether, the law can still maintain a meaningful distinction between what *appears true and what is true*. Along with the BSA’s statutory foundation, The recommendations in this paper suggest the institutional and doctrinal approaches required. Finally, it concludes that only by aligning BSA doctrine on relevance and admissibility with vertical GenAI obligations and horizontal institutional expertise for the Indian courts to deliver timely justice on such complicated areas with a distinction on what merely appears to be electronic evidence and what truly deserves that status in the digital age of deep fakes.

SIGNIFICANCE OF WITNESS DEPOSITION UNDER THE BHARATIYA SAKSHYA ADHINIYAM, 2023 – AN ANALYTICAL EXAMINATION.

Mr. Bharathi S,[610], Mr. Muthulakshmi M[611]

1. Introduction

Witnesses are the eyes and ears of justice–Jeremy Bentham

Witnesses are the foundation of successful criminal justice systems, as their cooperation with the law enforcement and judicial agencies are essential to the successful prosecution of crimes. They must be safeguarded against criminal suspects, intimidation or physical threats in order to defend the rule of law. However, despite having Witness Protection Scheme (WPS)[612] and other witness related provisions in the contemporary laws, their safety in regard to a fair trial is not much ensured by the judicial mechanism. Criminal justice reforms are possible only when the system safeguards the victim and witnesses. The court's responsibility is to conduct criminal trials impartially and independently, striking a fair balance between unjustified conviction and unjust acquittal. Witnesses play a crucial part in ensuring a fair trial and they should be independent, impartial, and unbiased in order to serve the goal. Witness testimony aids the court in determining the truth based on the facts and circumstances of the case.

The enactment of the Bharatiya Sakshya Adhiniyam, 47th act of 2023(BSA) represents a paradigmatic shift in India's approach to evidentiary jurisprudence.[613] Replacing the antiquated Indian Evidence Act of 1872(IEA) , the BSA embodies a comprehensive procedural architecture governing the admissibility, interpretation, and utilization of evidence in the criminal justice system.[614] This legislative reform occurs within the broader context of the Bharatiya Nagarik Suraksha Sanhita, 2023, which supplants the Code of Criminal Procedure, 1973, and signals a deliberate recalibration of India's criminal procedural framework to

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[612]Ministry of Home Affairs, Government of India, Witness Protection Scheme, 2018 (2018), https://www.mha.gov.in/sites/default/files/Documents_PolNGuide_finalWPS_08072019.pdf.
[613]Bharatiya Sakshya Adhiniyam, 2023, Parliament of India (received Presidential Assent 25 December 2023, effective 1 July 2024).
[614]Ministry of Law and Justice, *Government of India*, 'Bharatiya Sakshya Adhiniyam 2023: Key Features and Comparative Analysis with Indian Evidence Act 1872' (Government of India Press, 2024).

contemporary investigative capabilities, technological advancements, and constitutional imperatives.

1.1. Research Objective

This paper examines the multidimensional architecture of the BSA's evidentiary regime, with particular focus on: (i) the institutional recognition of witness protection as foundational to evidentiary integrity; (ii) the constitutional legitimacy of the framework through the lens of fair trial principles; and (iii) the practical challenges and ambiguities requiring judicial interpretation and institutional capacity-building for effective implementation.

1.2. Research methodology

This study adopts a doctrinal approach along with a comparative analysis between the old and the new act for evidence; examining the statutory provisions, judicial precedents, and scholarly commentary that enlightens the significance of witnesses.

2. Review of Literature

2.1. Constitutional Framework and the Right to Fair Trial

The evidentiary regime under the BSA, 2023 must be situated within the constitutional architecture established by the Indian Constitution, particularly Articles 20, 21, and 14, which guarantees protection against self-incrimination, the right to life and personal liberty, and equality before law respectively.[615] These constitutional provisions, as interpreted by the Supreme Court of India, have established a robust jurisprudence of fair trial rights encompassing the right to cross-examination, the right to confront witnesses, and the principle that evidence must be relevant, reliable, and fairly obtained.

The principle of fair trial, whilst not explicitly enumerated in the Constitution, has been recognized as implicit within Article 21 and as a manifestation of the rule of law.[616] This principle entails several constituent elements: (i) the right to a reasoned and impartial adjudication; (ii) the right to examine and cross-examine evidence and witnesses;

[615]Maneka Gandhi v. Union of India, (1978) 1 SCC 248 (Supreme Court of India) (establishing fair trial as component of Article 21 right to life).
[616]National Human Rights Commission of India, 'Report on Witness Protection: Constitutional and Procedural Dimensions' (NHRC, 2023).

(iii) the right to legal representation; (iv) the right against self-incrimination; and (v) the requirement that conviction be based upon evidence beyond reasonable doubt.[617]

2.2. Relevant Provision

The BSA's framework for witness protection, codified within Section 398[618] of the BNSS, 2023, must be evaluated against this constitutional backdrop. Witness protection, when properly implemented, enhances rather diminishing the fair trial protections.[619] The protection of witnesses from intimidation, coercion, and violence ensures that testimony is provided freely and without duress, thereby satisfying the integrity requirements of due process.

3. Comparative Analysis between Indian Evidence Act, 1872 and Bharatiya Sakshya Adhiniyam, 2023

The transition from the Indian Evidence Act (IEA) to the Bharatiya Sakshya Adhiniyam represents both continuity and transformation in evidentiary jurisprudence.[620] Whilst the BSA retains the fundamental structural logic of the IEA—establishing definitions of relevance, admissibility, and proof standards—the new legislation introduces substantive modifications addressing contemporary investigative realities and constitutional commitments. It also updates to reflect modern sensibilities, such as neutral language and objective fact definitions. The BSA aligns with IT Act, 2000, BNSS 2023and BNS 2023 for a cohesive framework. The IEA was applied to the judicial proceedings only while the BSA applies to court – martial as well. Here, the definition of Evidence focuses only on oral Testimony and documentary evidence while the new act concentrates on electronic and digital records additionally in order to cope up with the advancement of the technology.

The previous act provides a basic safeguard against the misuse of evidence whereby BSA strengthens and safeguards against custodial injustice and ensures transparency in handling electronic evidence on the other side. The objective of the IEA is to establish uniformity in evidentiary rules but BSA is most concerned about fairness, efficiency and adaptability in judicial processes in the digital age.

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[617]Bachan Singh v. State of Punjab, (1980) 2 SCC 684 (establishing requirements for fair criminal trial within constitutional framework).

[618]Witness protection scheme.—Every State Government shall prepare and notify a Witness Protection Scheme for the State with a view to ensure protection of the witnesses.

[619]Prakash Natarajan v. State of Tamil Nadu, (2012) 7 SCC 417 (recognizing that witness protection enhances fairness of adjudication).

[620]Law Commission of India, *supra* note 4; see also PRS India Legislative Research, 'The Bharatiya Sakshya Bill, 2023: Comparative Analysis' (PRS India, 2023), https://prsindia.org/billtrack/the-bharatiya-sakshya-bill-2023.

3.1. Documentary Evidence and Electronic Records

The IEA, 1872 restricted the definition of "document" to writings, maps, and caricatures, reflecting the technological reality of nineteenth-century litigation.[621] This framework created significant evidentiary lacunae when confronted with electronic communications, digital data storage, and computer-generated information. Sections 65A and 65B of the IEA, introduced via amendment in 2000, represented an initial legislative response to the digital revolution, but their application generated considerable uncertainty through their requirement for a certificate of authenticity and their ambiguity regarding the status of electronic evidence as primary or secondary.

The BSA, 2023 fundamentally reconceptualizes documentary evidence to encompass electronic records as primary evidence. Section 2(l) of the BSA defines "electronic record" as "data, record or data generated, image or sound stored, processed, transmitted or received in electronic form or microfilm or computer-generated microfiche."[622]

The critical innovation is the classification of electronic records as primary evidence, provided specified conditions are satisfied. Sections 62 and 63 of the BSA establish that electronic records produced from proper custody, and when not disputed, constitute primary evidence without requirement for the original document.[623] This represents a departure from the evidentiary hierarchy implicit in the IEA, which required production of original documents and treated electronic information as derivative or secondary.

The additional presumption with the emergence of electronic and documentary evidence requires the court presume its authenticity.

3.2. Witness Protection Integration

The IEA, 1872 contains no provisions addressing witness protection or the procedural safeguards for vulnerable or threatened witnesses.[624] Whilst judicial practice developed certain accommodations—such as screens for child witnesses or in camera examination—these were ad hoc measures lacking statutory foundation.

The BSA, through its integration with Section 398 of the BNSS, 2023, represents a paradigm shift by constituting witness protection as a fundamental component of the

[621] Indian Evidence Act, 1872, § 3 (defining nature of evidence and facts relevant to proof).
[622] Bharatiya Sakshya Adhiniyam, 2023, § 2(l) (defining electronic record).
[623] *ibid.*, §§ 62–63 (establishing conditions for admissibility of electronic records).
[624] Indian Evidence Act, 1872 (containing no provisions specifically addressing witness protection or security).

evidentiary and procedural architecture.[625] Section 398 of the BNSS establishes a comprehensive framework for witness protection, including provisions for physical security, anonymity, relocation assistance, and psychological support. This statutory recognition reflects the 14th Law Commission Report[626] and subsequent policy instruments, including the Witness Protection Scheme, 2018, which categorizes witnesses based on threat assessment.

4. Witness Protection as Foundational to Evidentiary Integrity

The international human rights jurisprudence, particularly in the the European Court of Human Rights, which has recognized that fair trial rights encompass not merely procedural protections but also substantive protections for witness safety and dignity.[627] The recognition of witness protection as an evidentiary principle rather than a purely administrative accommodation represents an important constitutional development.

In India, The integration of witness protection within evidentiary jurisprudence reflects a fundamental reconceptualization of the nature of evidence and its role within the adversarial process.[628] Traditionally, evidence has been understood as data or information demonstrating the occurrence or non-occurrence of facts. This conceptualization treats evidence as an object to be managed procedurally, with limited attention to the conditions under which human testimony is generated or the vulnerabilities of witnesses to intimidation and coercion.

The reliability and integrity of evidence, particularly testimonial evidence, is dependent upon the security and dignity of human sources. When witnesses fear for their safety or that of their families, or when witnesses face credible threats of violence or economic retaliation, the testimony they provide is compromised not merely in its truthfulness but in the conditions of its generation. The witness speaking under duress or fear presents evidence whose reliability is fundamentally undermined, even if the content of the testimony is factually accurate.

[625]Bharatiya Nagarik Suraksha Sanhita, 2023, § 398 (establishing statutory framework for witness protection).
[626]https://lawcommissionofindia.nic.in/report_fourteenth - Last accessed 04.02.2026
[627]European Court of Human Rights, *Ankerl v. Switzerland*, App. No. 17748/91 (19 June 1996) (recognizing witness protection as component of fair trial under European Convention).
[628]Dr. Manjula Banerjee, 'Witness Protection and Evidentiary Integrity: Constitutional Perspectives', *Indian Journal of Constitutional Law* 14.2 (2024), pp. 45–78.

4.1. Threat Assessment and Categorization

The Witness Protection Scheme, 2018, as incorporated within the BNSS, 2023, establishes a tripartite categorization of witness threat levels, determining the intensity and type of protective measures employed:[629]

Category	Threat Level	Protective measures
A	High-level threats - organized crime, terrorism or violence by powerful criminal syndicates.	Relocation to secure facilities, identity change, altered appearance and round-the-clock security personnel.
B	Threats to personal safety, reputation, or property, but not involving immediate threats to life.	Restricted access to witness location, security patrols, and periodic reassessment of threat level.
C	Moderate threats such as harassment or intimidation but without serious threat to personal safety.	Advice on personal security practices and monitoring of threat indicators.

The above categorization enables calibrated judicial application of protective measures, ensuring that the intensity of intervention is proportionate to the assessed risk and that the disruption to normal witness presence in court proceedings is minimized where threat levels do not warrant such disruption. This framework embodies principles of proportionality and necessity fundamental to constitutional governance.

4.2. Procedural Safeguards and Cross-Examination

The integration of witness protection with evidentiary principles generates important questions regarding the interplay between protective measures and the constitutional right to cross-examination. The confrontation clause, implicit within Article 21 of the Indian Constitution, protects the accused's right to examine witnesses against him to test their credibility and accuracy of observation.[630]

The BSA framework addresses this issue through the recognition that modified forms of cross-examination—including video conferencing, screens obscuring witness identity, or

[629]Ministry of Home Affairs, Government of India, 'Witness Protection Scheme, 2018: Guidelines for Implementation' (Government of India, 2018).
[630]Mulla v. State of Punjab, (2001) 5 SCC 234 (recognizing right to cross-examination as component of fair trial).

examination through intermediaries—may satisfy the confrontation requirement when threat levels necessitate such measures and when the core function of cross-examination—testing witness credibility and reliability—is substantially preserved.[631] However, the jurisprudence regarding the constitutional permissibility of such modifications remains evolving and requires careful judicial articulation.

The judiciary must navigate the tension between witness safety and the accused's confrontation rights through a principled framework: (i) threat assessment must be rigorous and based upon credible evidence of danger; (ii) the least restrictive modification capable of ensuring witness safety must be employed; (iii) the capacity for meaningful cross-examination must be substantially preserved; and (iv) the court must maintain supervisory oversight to ensure that protective measures are not abused to shield witnesses from accountability or to deprive the accused of fair trial protections.

5. Witness Protection Mechanisms on Statutory Architecture and Implementation

5.1. Section 398 of the BNSS, 2023

Section 398 of the BNSS, 2023 establishes the statutory foundation for witness protection, representing the first comprehensive legislative incorporation of witness protection within India's criminal procedure framework.[632] The section provides that the State shall ensure the safety of witnesses before, during, and after trial through provision of appropriate protection measures. The provision explicitly recognizes witness protection as obligatory rather than discretionary, thereby converting witness protection from an administrative accommodation to a statutory right.

The operative provisions of Section 398 require: (i) threat assessment by trained personnel; (ii) categorization of witnesses according to assessed threat level; (iii) implementation of protection measures proportionate to the threat; (iv) ongoing review and modification of protection measures as circumstances warrant; (v) provision of psychological support and rehabilitation services; and (vi) maintenance of confidentiality regarding protective measures and witness location.[633]

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[631] Bharatiya Nagarik Suraksha Sanhita, 2023, §§ 154–156 (permitting modified cross-examination procedures in witness protection contexts).
[632] Bharatiya Nagarik Suraksha Sanhita, 2023, § 398 (establishing statutory witness protection regime).
[633] Ministry of Home Affairs, *Witness Protection Scheme*, 2018, *supra* note 22.

Importantly, Section 398 extends protection not merely to witnesses but to their family members, recognizing the reality that threats to family are often more effective forms of intimidation than direct threats. This extension represents important recognition of the psychological dynamics of witness intimidation and the necessity for comprehensive protective measures.

5.2. Coordination with the Bharatiya Sakshya Adhiniyam

The relationship between witness protection under Section 398 of the BNSS and the evidentiary framework established by the BSA creates important implications for the admissibility and presentation of testimony. When witness protection measures are implemented, they inevitably affect the manner in which testimony is presented and the accused's ability to confront the witness. The BSA's framework must accommodate these procedural modifications whilst maintaining constitutional standards of fair adjudication.

The BSA's recognition of graduated modifications to cross-examination procedures—including video conference examination, screens obscuring identity or examination through intermediaries—provides the procedural mechanism through which witness protection can be operationalized without fundamentally undermining cross-examination rights.[634] However, the judicial application of these provisions remains nascent and requires development through case law.

5.3. Institutional Implementation Challenges

Despite the statutory architecture established by Section 398 of the BNSS, significant implementation challenges persist. The establishment of witness protection units within state police forces and the provision of trained personnel capable of conducting threat assessment and providing protective services remains incomplete in many jurisdictions.[635] Witness protection services remain inadequately funded and resourced in significant portions of India's federal structure.

Additionally, the practical coordination between the judicial system and witness protection agencies remains underdeveloped. Judges frequently lack mechanisms to confidentially communicate information regarding witness security concerns to investigating agencies and witness protection units. The integration of witness protection within evidentiary

[634]Bharatiya Nagarik Suraksha Sanhita, 2023, §§ 154–156 (permitting remote examination, screens, and intermediaries in witness protection cases).
[635]National Human Rights Commission of India, 'Review of Witness Protection Implementation Across Indian States' (NHRC Report, 2024).

jurisprudence requires institutional mechanisms enabling such communication without compromising the procedural integrity of adjudication.

6. Persisting Ambiguities and Challenges

6.1. Authentication of Electronic Evidence

Despite the refinement of authentication standards within the BSA, significant ambiguities persist regarding the practical application of authentication requirements. Particular challenges include: (i) the appropriate degree of technical specificity required in certification documents; (ii) the standards for assessing the competence of certifying professionals; (iii) the procedures for challenging authentication in cases where expertise is contested; and (iv) the allocation of burden of proof regarding authentication.[636]

Additionally, emerging forms of electronic evidence present novel authentication challenges. Artificial intelligence-assisted evidence analysis, biometric identification systems, and real-time surveillance technologies generate information whose reliability depends upon the functioning of complex technical systems whose operation may not be fully comprehensible to adjudicators. The judiciary requires guidance through appellate jurisprudence establishing standards for the admission of such evidence.

6.2. Scope of Judicial Discretion

The BSA confers upon judge's significant discretion in assessing the reliability of electronic evidence through reference to "relevant circumstances".[637] However, the provision offers limited guidance regarding the considerations relevant to reliability assessment or the standards governing the exercise of discretion. This discretionary framework creates risks of inconsistent application and potential abuse, with some judges potentially applying overly restrictive standards that exclude probative evidence whilst others apply permissive standards admitting unreliable evidence.

Appellate jurisprudence is required to establish principled framework governing the exercise of discretion, delineating factors relevant to reliability assessment, establishing presumptions regarding technological reliability, and articulating standards for reversal on appeal of discretionary determinations.

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[636]Rajesh Masranalli v. State of Karnataka, (Unreported, Karnataka High Court, 2024) (addressing challenges regarding authentication of digital evidence).
[637]Bharatiya Sakshya Adhiniyam, 2023, § 63.

6.3. Operationalization of Witness Protection

The implementation of witness protection under Section 398 of the BNSS remains variable across Indian jurisdictions. Significant disparities exist regarding the institutional capacity to conduct threat assessment, the availability of protection services, and the coordination between witness protection units and judicial officers.[638] These disparities create risks that witnesses in certain jurisdictions receive inadequate protection whilst the accused in certain contexts faces unfair evidentiary disadvantage through protected testimony they cannot meaningfully confront.

Federal coordination and resource allocation mechanisms are necessary to ensure that witness protection is implemented consistently and equitably across jurisdictions, thereby promoting both fairness and the legitimacy of adjudication.

7. Conclusion

The Bharatiya Sakshya Adhiniyam, 2023 embodies a comprehensive recalibration of India's evidentiary jurisprudence, integrating witness protection as a foundational principle whilst substantially modifying the framework for admitting electronic and digital evidence. These innovations reflect both constitutional commitments to fair trial and due process and pragmatic recognition of contemporary investigative capabilities and technological realities.

The evidentiary framework established by the BSA achieves important advances through: (i) the explicit recognition of electronic evidence as primary evidence, subject to appropriate authentication; (ii) the integration of witness protection into statutory procedure, converting witness protection from administrative accommodation to constitutional requirement; (iii) the expansion of secondary evidence and expert testimony provisions, providing enhanced opportunity to test evidence; and (iv) the conferral of informed judicial discretion in assessing the reliability of novel forms of evidence.

However, the long-term effectiveness of the BSA will depend upon: (i) the development of coherent judicial interpretation through appellate jurisprudence establishing clear principles governing the application of discretionary authority and the assessment of constitutional compliance; (ii) substantial institutional capacity-building, particularly in subordinate courts and witness protection units, to enable competent implementation of framework provisions; (iii) consistent resource allocation and federal coordination to ensure equitable implementation

[638]Ministry of Home Affairs, 'Implementation Report: Witness Protection Across States' (2024).

across jurisdictions; and (iv) careful maintenance of equilibrium between technological efficiency and constitutional guarantees of fairness, transparency, and due process.

The judiciary has critical responsibility to ensure that the transformative potential of the BSA is realized whilst guarding against the dangers of inconsistent application and the subordination of constitutional principles to procedural efficiency. Through principled jurisprudence and institutional commitment to fair adjudication, the BSA framework can effectively serve the ends of justice whilst maintaining the dignity and integrity essential to constitutional governance.

BRIDGING THE GAP BETWEEN COURSES AND COURT IN EFFECTIVE IMPLEMENTATION OF CRIMINAL LAWS

Prof. (Dr.) K.S. Gopalakrishnan[639]

Mr. D. Deva[640]

INTRODUCTION

In general, colleges primarily teach the theoretical aspects of criminal law. However, in actual court practice, not only substantive criminal law but also the criminal rules of practice and procedural laws are applied to conduct trials effectively. Students who learn only theory often remain unaware of court procedures, filing processes, drafting techniques, and practical aspects of litigation. They may not know how to prepare pleadings, file cases, or present arguments before the court. To address this gap between academic learning and practical application, clinical courses have been introduced in legal education.[641] These courses train students in drafting, pleading, and understanding courtroom procedures. Therefore, clinical legal education plays a vital role in equipping law students with practical skills and preparing them for effective participation in the justice delivery system.

NATURE OF THE GAP

The gap between legal education and court practice arises from the difference between academic orientation and real-time criminal justice processes. Universities primarily concentrate on completing the syllabus, conducting internal and external examinations, and ensuring students graduate on time. Although recent reforms have introduced court visits, moot courts, and mock trials to provide experiential learning, these methods offer only a partial understanding of actual criminal proceedings. Legal education largely explains statutory provisions under the Bharatiya Nyaya Sanhita (BNS), 2023[642] (Indian Penal Code), Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023[643] (Code of Criminal Procedure), and Bharatiya

[639] Principal, Government Law College, Coimbatore.
[640] Guest Lecturer, Government Law College, Coimbatore.
[641] Laxminath, A., Criminal Justice in India: Primitivism to Post Modernism, Journal of the Indian Law Institute, Vol. 48, No. 1 (January-March 2006), pp. 26-56; K. Sreedhar Rao, Criminal Justice System – Required Reforms, Journal of the Indian Law Institute, Vol. 43, No. 2 (April-June 2001), pp. 155-173.
[642] Bharatiya Nyaya Sanhita, 2023, No. 45 of 2023, Gazette of India, 2023.
[643] Bharatiya Nagarik Suraksha Sanhita, 2023, No. 46 of 2023, Gazette of India, 2023.

Sakshya Adhiniyam (BSA)[644], 2023 (Indian Evidence Act). However, it does not sufficiently expose students to the functioning of police stations, the procedural stages of criminal case registration, or the practical challenges involved in investigation and charge sheet framing.[645]

THEORETICAL KNOWLEDGE Vs. PROCEDURAL REALITIES

Classroom teaching provides foundational knowledge about offences, punishments, bail, trial stages, and evidentiary rules. Students understand how a criminal case theoretically progresses from registration of a complaint to final judgment. Yet, in practice, the process begins at the police station, where procedural realities differ significantly from textbook descriptions. students are rarely trained in drafting a criminal complaint, understanding the technical requirements for registering a First Information Report (FIR), or knowing how to file and track complaints through online portals. Even some practicing advocates face difficulties in drafting precise complaints, filing online FIRs, or checking the digital status of cases. This reflects a systemic disconnect between academic preparation and procedural competence. Further, universities may provide basic explanations about court functioning, but they seldom cover practical police procedures such as preliminary inquiry, documentation, investigation stages, or charge sheet preparation. As a result, graduates enter the legal profession with conceptual clarity but limited operational skills.

RESEARCH FINDINGS NOT IMPLEMENTED IN COURTS

Research findings are often theoretical and sample-oriented rather than strongly evidence-based, and they frequently lack practical application in real-life settings. Although high-quality research is welcomed within the judiciary, it is not always effectively implemented in court practice. Nevertheless, certain legislations have been enacted or amended based on scholarly research and expert recommendations, demonstrating that academic contributions can influence legal development when properly integrated.

DELAY IN UPDATING CURRICULA

The delay in updating criminal law curricula is not due to unwillingness but is largely procedural and structural. Although criminal laws in India were recently replaced by the Bharatiya Nyaya Sanhita, 2023, Bharatiya Nagarik Suraksha Sanhita, 2023, and Bharatiya

[644] Bharatiya Sakshya Adhiniyam, 2023, No. 47 of 2023, Gazette of India, 2023.
[645] Alok Mishra. Indian Criminal Reformation: A critical analysis. International Journal of Reviews and Research in Social Sciences. 2023; 11(1).

Sakshya Adhiniyam, 2023**,** many universities continue teaching the older framework for some time. The reasons include bureaucratic approval process, regulatory formalities, faculty preparedness, textbook and study material availability, examination cycle constraints, transitional confusion.[646]

LACK OF PRACTITIONER INVOLVEMENT IN ACADEMIC RESEARCH

There is limited involvement of judges, public prosecutors, police officials, and practicing advocates in curriculum design and academic research. This restricts the integration of field-based insights into classroom teaching.

CAUSES OF THE GAP

i. **Limited Interaction between judges and scholars**

The judiciary is the independent body primarily focuses on adjudication of cases. There are bound by precedent and statutory interpretation and procedural constraints. Academic scholars are focus on theoretical analysis, critique and reform proposals. These distinct institutional roles limit regular collaboration.

ii. **Outdated criminal law syllabus**

The criminal law syllabus often becomes outdated due to slow curriculum revision processes, administrative approvals, and delays in incorporating newly enacted laws like the Bharatiya Nyaya Sanhita and related reforms. As a result, students learn superseded provisions instead of current legal procedures, widening the gap between classroom teaching and actual court practice.

iii. **Overburdened judiciary**

An overburdened judiciary struggles with heavy case backlogs, leaving judges with limited time to engage with academic research or adopt innovative legal practices. The judiciary primarily focused on case disposal and speedy trial and this workload pressure widens the gap between classroom learning and effective courtroom implementation of criminal laws.

[646] Vepa P. Sarathi, Historical Background of the Indian Evidence Act, 1872, Journal of the Indian Law Institute, Special Issue: 1972 (1972), pp. 1-25. Also see, Bikashita Choudhury & Aditya Sinha, The Need for Amending Indian Evidence Act, 1872 (March 2023), EAC-PM Working Paper Series EAC-PM/WP/12/2023, available at https://eacpm.gov.in/wp-content/uploads/2023/07/12-Evidence-Act.pdf

iv. Lack of interdisciplinary studies

The gap persists because criminal law education often lacks interdisciplinary integration with criminology, forensic science, psychology, and policing practices, limiting practical understanding. Without cross-disciplinary exposure, students struggle to connect legal theory with real-world investigation and trial processes.

IMPACT OF THE GAP

Today's law students are tomorrow's advocates, public prosecutors, Attorneys General, judges, and juristic thinkers. The quality of their education directly shapes the strength of the justice system. When legal training remains largely theoretical and does not provide sufficient practical exposure, the long-term consequences affect not only the profession but society as a whole.[647]

Inefficient law enforcement refers to the failure of authorities to effectively implement and enforce laws due to procedural errors, lack of coordination, inadequate training, delay in investigation, or misuse of legal powers.In the criminal justice context, it may include improper registration of FIRs, weak investigation, poor evidence collection, delay in filing charge sheets, and lack of coordination between police, prosecutors, and courts. Such inefficiency can reduce conviction rates, delay justice, and weaken public confidence in the legal system.

Another serious impact is delayed justice. Judges and advocates who are not practically trained may struggle with case management, procedural compliance, and evidentiary evaluation. This can lead to frequent adjournments, misinterpretation of procedural stages, and prolonged trials. As a result, victims wait longer for relief, and accused persons face extended uncertainty.

The gap may also lead to inconsistent interpretation of laws. Without strong practical grounding, legal professionals may rely solely on theoretical understanding, which can result in varied interpretations of statutory provisions. Such inconsistency affects uniformity in judicial decisions and creates confusion in the legal system.[648]

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[647] Law Commission of India, Report subject Wise, Indian Evidence Act, 1872, available at https://lawcommissionofindia.nic.in/cat_Evidence

[648] R. Dworkin, Taking Rights Seriously (1977). The importance of the influence of the civil law tradition on the legal system of the US is often underestimated. An example is M. Adams & D. Broeren, 'Rechterlijke argumentatie en transparantie: een rechtsvergelijkende exercitie', in D. Broerders et al. (eds.), Speelruimte voor transparantere rechtspraak (2013), pp. 167-206, who without further ado present the US legal system as part of the common law tradition.

Furthermore, insufficient practical exposure contributes to weak policy formulation. Future jurists and legal policymakers who lack field experience may design reforms that are ideal in theory but difficult to implement in practice. This disconnect can limit the effectiveness of legislative and administrative changes.

IMPORTANCE OF BRIDGING THE GAP

Bridging the gap is essential for strengthening and it is very important for the proper functioning of the criminal justice system. When legal education combines strong conceptual understanding with practical courtroom experience, future judges are better prepared to deliver fair and reasoned judgments. Conceptual analysis helps judges correctly interpret statutory provisions and apply them to the facts of each case. Practical exposure enables them to manage trials efficiently and avoid procedural mistakes. As a result, courts can conduct speedy trials without unnecessary errors.

When judgments are fair, clear, and legally sound, the chances of appeal are reduced. This saves valuable judicial time and protects victims from prolonged litigation. It also prevents accused persons from suffering due to incorrect or careless decisions. An unfair judgment in a criminal case can deeply affect the life, liberty, and reputation of an individual. fairness in decision-making is more essential, William Blackstone in his principle emphasizes that protecting innocent persons from wrongful punishment is more important than securing convictions at any cost.

Thus, bridging the gap between academic learning and court practice strengthens judicial reasoning, ensures fair judgments, reduces appeals, and ultimately safeguards justice in the criminal court system.

a) **Enhances Judicial Reasoning -** When judges have both theoretical knowledge and practical training, they can analyze facts carefully and apply the law correctly. Strong judicial reasoning leads to fair and balanced judgments. In *Maneka Gandhi v. Union of India*, the Supreme Court expanded the meaning of "procedure established by law" and strengthened fairness in legal interpretation. This shows how proper reasoning improves justice delivery.[649]

[649] *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.

b) **Promotes Evidence-Based Criminal Justice Policies -** Bridging the gap helps courts and lawmakers rely on research, data, and expert reports while shaping criminal law policies. In *State of Punjab v. Baldev Singh*, the Court stressed strict compliance with procedural safeguards based on fairness and evidence standards.[650] This reflects the importance of evidence-based approaches.

c) **Strengthens Rule of Law -** The rule of law means everyone is equal before the law. In *Kesavananda Bharati v. State of Kerala*, the Supreme Court held that the rule of law is part of the basic structure of the Constitution.[651] Proper legal education ensures that future judges uphold this principle without bias.

ROLE OF LEGAL EDUCATION

Clinical Legal Education: Clinical training helps students handle real or simulated cases, draft complaints, and understand client interaction. This practical exposure connects classroom theory with actual criminal procedure and improves professional readiness.

Moot Courts and Mock Trials: Moot courts and mock trials build confidence and prepare students to conduct criminal trials effectively without procedural mistakes. By repeatedly participating in moot courts, students develop clarity in speech, logical reasoning, and structured argumentation. They also learn how to think quickly, manage pressure, and maintain professional courtroom conduct. These skills are essential for handling actual criminal cases.

Internship Programs in Courts: Court internships allow students to observe judges, prosecutors, and advocates in real proceedings. By seeing how cases move from FIR to judgment, students understand practical challenges in implementing criminal laws.

Research-Based Learning: Research-oriented learning encourages students to study real case problems and legal reforms. When research is linked with field realities, it supports better judicial decisions and effective criminal justice policies.

[650] *State of Punjab v. Baldev Singh*, (1999) 6 SCC 172.
[651] *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225.

JUDICIAL ACADEMIC COLLABORATION

Enhances Practical Understanding: Joint seminars and workshops allow judges, advocates, and students to interact directly. This helps students understand real courtroom procedures and practical difficulties in criminal cases.

Improves Judicial and Academic Collaboration: Judicial lectures in law schools create a direct link between courts and universities. Judges can share real experiences, which helps students connect legal theory with actual practice.

Promotes Research-Based Decision Making: Research consultation for courts allows academic experts to provide studies and data that support better judicial reasoning. This encourages evidence-based implementation of criminal laws.

Strengthens Policy Formulation: Including academics in policy drafting committees ensures that criminal law reforms are both practical and research-oriented. This results in effective laws that can be properly implemented in courts.

LAW REFORM AND POLICY IMPACT

Academic Research Influencing Amendments: Research done in universities can help in improving criminal laws. When student research and scholarly studies are considered during law-making, new amendments can be introduced to correct practical problems in courts. This connection between research and legislation reduces the gap between theory and practice.

Criminal Law and Procedural Reforms: Procedural reforms based on academic study can improve investigation, trial process, and evidence handling. When reforms are introduced after careful research, courts function more smoothly and delays are reduced. This helps in better implementation of criminal laws.

Use of Criminological Studies: Criminological theories explain why crimes happen and how offenders behave. These studies help lawmakers decide how criminals should be treated, whether through punishment, reform, or rehabilitation. When such theories are used in legislation, the law becomes more realistic and socially effective.

Policy Making Based on Research and Theory: If students' ideas and academic findings are reflected in policy making, new laws and punitive measures can be designed to prevent crime

and protect society. Evidence-based policies create safer communities and ensure that criminal justice is fair and effective.

USE OF TECHNOLOGY

Digital Courts and Online Databases: Digital courts and online case databases help students, lawyers, and judges access judgments, case status, and legal documents easily. This improves understanding of real court practice and reduces the difference between classroom learning and actual court procedures.[652]

AI-Based Legal Research Tools: AI research tools help in quickly finding relevant case laws, statutes, and legal principles. Students and judges can save time and improve the quality of legal analysis. This strengthens judicial reasoning and makes court decisions more accurate.

Access to Academic Journals for Judges: When judges have access to academic research and journals, they can understand new legal developments and reform ideas. This allows research-based knowledge to be reflected in court decisions, reducing the gap between theory and practice.[653]

Data-Driven Criminal Justice Reforms: Using data and research studies helps the government and courts understand crime patterns and procedural delays. Policies and reforms based on real data make the criminal justice system more effective and fair. This ensures better implementation of criminal laws and creates a safer society.

RECOMMENDATIONS

Mandatory Judicial–Academic Exchange Programs: Regular interaction between judges and law teachers will create mutual understanding. Judges can explain real court problems, and scholars can share research ideas. This exchange helps connect theory with practical experience and improves criminal law implementation.

Continuous Legal Education for Judges: Ongoing training programs for judges help them stay updated with new laws, technologies, and procedural changes. When judges continuously

[652] B. Leiter, 'American Realism', in M.P. Golding & W.A. Edmundson (eds.), The Blackwell Guide to the Philosophy of Law and Legal Theory (2005), pp. 50-66, B. Leiter & M.X. Etchemendy, 'Naturalism in Legal Philosophy', Stanford Encyclopedia of Philosophy (2017).
[653] See e.g. Nussbaum, supra note 42.

learn, their decisions become more accurate and efficient, reducing errors and delays in criminal trials.

Updated Curriculum Aligned with Court Realities: Law colleges should frequently revise their syllabus according to present court practices and new criminal laws. Including training in drafting, FIR procedures, digital filing, and case management will prepare students for real courtroom challenges.

Policy-Based Research Funding: Government and institutions should support research that focuses on practical criminal justice issues. When research findings are used in policy making and law reforms, the gap between academic study and court practice becomes smaller, leading to better enforcement of criminal laws.

CONCLUSION

Bridging the gap between courses and court is essential for the effective implementation of criminal laws. Legal education must move beyond theory and include practical training that reflects real courtroom and police procedures. When academic research, curriculum reforms, judicial training, and policy development work together, the criminal justice system becomes more efficient and fair. Proper coordination between universities and courts strengthens judicial reasoning, reduces delay, improves law enforcement, and protects human rights. A balanced integration of theory and practice ultimately ensures speedy justice, consistent interpretation of laws, and greater public confidence in the criminal justice system.

CHALLENGES IN IMPLEMENTATION AND CAPACITY BUILDING IN HANDLING CYBER-CRIME. INSTITUTIONAL READINESS OF LAW ENFORCEMENT AND JUSTICE DELIVERING SYSTEM.

Ms. Ravikrishnan.P[654]

Introduction

India emerged as a global technology hub following India's economic liberalization during 1991. The telecommunication revolution transformed India's communication roadmap across urban and rural areas. Internet penetration surged from 0.5% in the year 2000 to over 50% by the year 2023. This digital transformation created substantial opportunities for countries economic growth and social development[655].

The fast pace expansion of the digital ecosystem in our country has led to parallel rise in cyber-crimes in most of the important sectors like personal data privacy, Personal banking, and governance are few to sectors to mention. The advancement of technology not only helps the mankind by widening the scientific horizon but also poses its own challenges in managing and regulating it, otherwise leads to exploitation of the technology results in cyber-crime which pose lot of challenges to law enforcement as well as legal system.

The present challenges for law enforcers are to handle the tech- driven crimes and these challenges not limited to any single conventional legal category but almost in all. The presently available institutional infrastructures starting from policing, prosecutions to justice delivery systems are not adequate in handling the present day and every evolving technological challenge.

Our country requires fast track justice administrative system to conduct cyber-criminal trials and harder punishments. It requires new definitions in criminal laws with specific to cybercrimes and technology driven policing along with investigation including digital forensic admissible in court of law and strengthening the administrative frame work on entire justice delivery system for quick conviction with harder punishments.

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[654] 1st Year LL. B student, KMC College of Law, Tirupur.
[655] Telecom Regulatory Authority of India, 'Performance Indicators Reports' (TRAI)

At present our Indian judiciary is facing the challenges in interpreting cybercrime cases which are complex in nature, are mostly relay on technical evidence and challenges in cross-border jurisdictional issues. The cyber-crime is ever evolving and we have limited judicial precedents as guiding case laws on emerging technology. The IT Act, 2000 remains the cornerstone and serves as an India's IT legislative frame work to handling the cyber related crimes along with sections in the BNS, 2023.

The Information Technology Act, 2000 has address the issues of cyber crimes mainly in two categories, first one in Chapter IX which deals with penalties and adjudications under sections 43 to 47 and another is Chapter XI which deals with offences under sections 65 to 75. The Information Technology Act, 2000 deals with the following cyber crimes along with others[656]:

a) Tempering the source documents of the computer
b) Computer Hacking,
c) Publishing of obscene content in digital form
d) Apply to offences outside India – this Act give extraterritorial jurisdiction

Cyber crimes other than those mentioned under the Information Technology Act, 2000

1. Cyber Stalking,
2. Cyber Squatting,
3. Data Diddling,
4. Cyber Defamation,
5. Trojan Attack,
6. Financial Crimes,
7. Internet Time Theft,
8. Virus / Worm Attack,
9. E-mail spoofing,
10. E-mail Bombing,
11. Salami Attack,
12. Web Jacking.

[656] R. M. Kamble & C. Vishwapriya : "Cyber Crimes and Information Technology", NLR, 2008 – 2009, Vol. 4, No. 1, p. 9.published in Cyber crime and judicial response in India, by Dr.Abhijeet Deb-Assistant Professor, Jalpaiguri Law College

13. Cyber Terrorism
14. Digital arrests.

The problem is not only isolated to our country but it's a world menace where criminals do not have borders and countries do not have a workable Mutual legal assistance treaty for effective crime detection and prevention.

As a country we are having several cyber security and quick response platforms to prevent & trace cyber related crimes. Each platform performs a unique function and from crime reporting till charge sheet in the court of law. Before we embark in to the details it is imperative to understand the details of the platforms Government of India[657] has and the interlinking between them and the e-governance.

Name of organization	Full name	Core objective	Who controls	Functionality
IC4	Indian Cyber Crime Coordination Center	Nodal agency which over sees national cyber crime and related activities	Under Ministry of Home affairs	Fully Operational from 10th Jan 2020
ICJS	Inter-Operable Criminal Justice system	Connects. 1. Police – CCTNS 2. e- Court 3. e-Prison 4. Forensic 5. Prosecution	Under Ministry of Home affairs	Focusing on modernization and supporting the criminal procedure (Identification) ACT 2022
NCRB	National Crime Record Bureau	It's a implementation body for ICJA	Under Union Home Ministry	

[657] Government of India, Ministry of Home affairs and PIB website.

NCFL	National Cyber Forensic Lab	HO: New Delhi and Regional Labs at, Hyderabad,Chandigarh d,Kolkotta, Guwhati,Bhopal,Pune	Under Union Home Ministry	
CCPWC	Cyber Crime prevention against women and children	Funded thro' Nirbhaya fund. 1. Cyber Forensic cum Training lab 2. Training Police	Under Ministry of Home affairs	Promote state -Central collaboration thro I4C
NTAU	National Cyber Crime Threat analysis Unit	Analysis threat and report to other stake holders		
NCTC	National Cyber Crime Training center	Involves in training		
CyMAC	Cyber Multi Agency Center	Shares information to IB,CBI, State police in real-time	Under Ministry of Home affairs	
Samanvaya		LEA data analysis to map hotspots and inter-state co-ordination	Under CyMAC	

Pratibimb		Tech Interface, evidence synthesis and prosecution preparation	Under CyMAC	
CFCFRMS	Citizen Financial Cyber Fraud reporting and management system	Handles financial related cyber crimes	Under Union Home Ministry	
CCTNS	Crime and Criminal Tracking network and systems	E portal for Police, unified portal	Under Ministry of Home affairs	
CERT-In	Indian computer Emergency Team	Under CERT-In directive – 6 hours reporting to enhance national security	Under Min of Electronics and IT	

[658]State of the Art, Cyber Fraud Mitigation Centre (CFMC) has been established at I4C in which representatives of major banks, Financial Intermediaries, Payment Aggregators, Telecom Service Providers, IT Intermediaries and representatives of States/Union Territories, Law Enforcement Agency are working together for immediate action and seamless cooperation to tackle cybercrime.

[658] Government of INDIA, MINISTRY OF HOME AFFAIRS, Reply in LOK SABHA unstarred question No:452

[659]The Massive Open Online Courses (MOOC) platform, namely 'CyTrain' portal has been developed under I4C, for capacity building of police officers/judicial officers through online course on critical aspects of cyber crime investigation, forensics, prosecution etc. More than 1,44,895 police officers/judicial officers from States/UTs are registered and more than 1,19,628 Certificates issued through the portal.

[660]'Sahyog' Portal has been launched to expedite the process of sending notices to IT intermediaries by the Appropriate Government or its agency under clause (b) of sub-section (3) of section 79 of the IT Act, 2000 to facilitate the removal or disabling of access to any information, data or communication link being used to commit an unlawful act.

[661]A Suspect Registry of identifiers of cyber criminals has been launched by I4C on 10.09.2024 in collaboration with Banks/Financial Institutions. So far, more than 18.43 lakh suspect identifier data received from Banks and 24.67 lakh Layer 1 mule accounts have been shared with the participating entities of Suspect Registry and declined transactions worth Rs. 8031.56 crores.

India is not part of the Budapest Convention, avoiding full Budapest Convention membership over sovereignty issues but actively supports UN-led efforts for global cybercrime treaty (voted in favor of a Russian – led UN resolution to create a more inclusive, universally accepted global cybercrime convention)and participates in international cyber cooperation mechanisms like UNGGE, OEWG, and INTERPOL. India is also an active participant in UN-led initiatives like the Internet Governance Forum to develop global cyber norms.

India has strict national legislation like the Information Technology Act, 2000, and the (DPDP Act) i.e Digital Personal Data Protection Act, 2023 to combat cybercrime.

Cyber crime data – an over view

In our country we have started moving fast in developing and operationalizing the required infrastructure to prevent and detect the cyber crime but these are not able to handle the raise in

[659] ibid
[660] ibid
[661] ibid

cyber crime activities. The low conviction rate is very alarming, before we go in to the details of challenges let see the cyber crime data as a reference.

Cyber crime data as on 2025[662]- as per National Crime Records Bureau (NCRB)
The data for the year 2022 and 2023 are as below

Cyber crime numbers	Year 2022	Year 2023	% increase
Total registered cases	65,893	86,420	31.15%
Crime under IT Act,2000	31,908	44,237	38.64%
Crime under BNS,2023	33,798	41,849	23.82%

In the above period,

- The Fraud including financial fraud cases registered under BNS tops the list – 17,470 cases in the year 2022 had increased to 19,466 cases in the year 2023, jump of 11.43%
- Publication/transmission of obscene content registered under IT ACT,2000 was- 6,896 cases in the year 2022 and 7,893 cases in the year 2023 – a jump of 14.46%

Apart of cyber crime data, the main worrying trend in the low conviction rate, as per the published data from NCRB[663]

Calendar year	Year 2022	Year 2023
Case charge sheeted, as per BNS, 2023	3,391	4,001
Trial completed cases	230	484
Conviction	129	22
Rate of conviction	56.1%	4.5%

Once the cyber crime cases reach the court system, progress slow down dramatically. The pendency rate was high and the conviction rate was low.

Key Legal Provisions for Cybercrime Investigation

Section 69 –Information Technology Act, 2000:

[662] Crime in India' published by NCRB.
[663] Crime in India' published by NCRB. ANNEXURE-III (Page 2 of 2) L.S. .US. Q. NO. 452 FOR 02.12.2025

The Government issues directions for interception, monitoring or decryptions of any information through any computer resource if it is reasonable to do so in the public interest. Grounds: Sovereignty and Integrity of the State; public order or preventing incitement to the commission of any cognizable offence.

Section 43A –Unlawful Activities (Prevention) Amendments Act 2019

Government can designate Individuals as a terrorist, DSP-level officers empowered to arrest, investigate, and detain suspects in terrorism-related cyber activities.

Section 91 – BNSS, 2023

Empowers a Court or an officer in charge of a Police Station to issue summon to provide any document or electronic record for the purpose of investigation.

Section 78 –Information Technology Act, 2000:

Police Inspector or above authorized to investigate offenses under the IT Act.

Section 80 –Information Technology Act, 2000:

Police Inspector or above can enter, search, and arrest without warrant in public places for IT Act offenses.

<u>The upper level Institutional challenges (Investigative and justice delivery system)</u>

(a) Legal Intricacies in law enforcement[664]

Digital Evidence Admissibility:

Section 63 of the Bharathiya Sakshya Adhiniyan (BSA) 2023, the new provision requires a mandatory certificate for the admissibility of digital evidence to ensure their authenticity and integrity requires strict certification for electronic records, often a hurdle in court.

[664] Jurisprudential challenges in cyber crime adjudication, by M.K.Sil,25th April 2025

Jurisdictional Overlaps:

Offenses often invoke both the IT Act and BNS, leading to confusion over applicable provisions and forum.

Cross-Border Challenges:

Many cybercrimes originate outside India, complicating investigation and prosecution.

Lack of Uniform Interpretation:

Inconsistent application of cyber laws across jurisdictions due to limited cyber-specialized courts.

(b) Jurisprudential Challenges[665]

Vague Legal Language

Section 66 of the IT Act, 2000 uses broad terms like " dishonesty" or " fraudulently" open to subjective interpretation.

Interpretative Ambiguity:

For instance, in unauthorized access or hacking cases, it remains unclear whether mere access without demonstrable malicious intent constitutes a punishable offense.

Mens rea in Cyber Offenses:

Determining intent is particularly challenging in cyber offenses where acts may be automated, executed remotely, or obscured by digital anonymity.

Traditional Doctrines Misfit:

Conventional legal concepts such as physical possession, direct causation, or tangible harm often do not align with the virtual nature of cybercrimes, complicating adjudication.

The Bharatiya Nyaya Sanhita,2023[666]

The Cyber crimes are tried under 'Organized Crime" [Sec 111] of BNS,2023

[665] Jurisprudential challenges in cyber crime adjudication, by M.K.Sil,25th April 2025
[666] The Bharatiya Nyaya Sanhita, 2023

(1) Any continuing unlawful activity including kidnapping, robbery, vehicle theft, extortion, land grabbing, contract killing, economic offences, **cyber-crimes** having severe consequences, trafficking in people, drugs, illicit goods or services and weapons, human trafficking racket for prostitution or ransom by the effort of groups of individuals acting in concert, singly or jointly, either as a member of an organized crime syndicate or on behalf of such syndicate, by use of violence, threat of violence, intimidation, coercion, corruption or related activities or other unlawful means to obtain direct or indirect, material benefit including a financial benefit, shall constitute organized crime.

In the explanation, sub-sections: There is no explanation for Cyber Crime and no specific punishment for cyber crime.

[Sec 111.1] Ingredients of section 111

To constitute the offence under section111, the following ingredients must exist

(1) Continuing unlawful activity over a period of time
(2) by a group of two or more individuals
(3) acting in concert as a syndicate
(4) use or threat of violence, coercion or intimidation
(5) to obtain, directly or indirectly, material or financial benefit

The trial happens in Judicial Magistrate court and no separate court for cyber crimes. The most of the judicial magistrate courts are not equipped with IT enabled system to conduct speedy trials for cyber crimes as well as understanding of the digital evidence and cyber forensic reports

- During the trials IT Act,2000 is also referred leads to confusion where IT Act,2000 relay on Natural justice and BNS relay on evidence, more over no clear definition for cyber crime in BNS which leads to lot of interpretation during trials.

- Digital evidences are fragile, possibility for alteration, or deletion. gathering data and preservation is difficult while maintaining a strict chain of custody for court admissibility

- Advanced technologies like the dark web**, VPNs, and encryption, as well as the use of crypto currencies, make it difficult to identify and trace perpetrators.

  ** The dark web is also a part of the internet but is not indexed by the search engines and is only accessible using specialized software, such as the Tor browser. It is frequently used for illicit activities, like the sale of illegal drugs and weapons, and it can be a difficult environment for investigators to navigate. One of the biggest challenges for investigators in the face of the use of the dark web is the anonymity it provides. The dark web is designed to protect the identity of its users, and it's difficult for investigators to identify individuals and collect evidence against them. Additionally, the lack of centralization on the dark web makes it hard to track the movement of illegal goods and services. It also raises broader concerns about the security and stability of the internet. While the dark web has the potential to provide a platform for the free exchange of information and ideas, it also presents risks and challenges that must be carefully managed. The need for ongoing efforts to stay up-to-date on the prevailing trends and technology in order to effectively combat these crimes[667]

  Several online platforms are widely available in India, but the adequacy suffers from shortages in trained cyber -forensic personnel, specifically at local levels.

Recommendations and conclusion

India's Cyber crime legal infrastructure requires comprehensive transformation to address real world digital challenges effectively. The present Information Technology Act, 2000 time and again exhibits the structural inadequacies in combating sophisticated cyber threats.

The Proposed Digital India Act, 2023 promising workable solutions for addressing technology challenges and enhanced digital security should match with global best practices.

[667] Investigative Challenges in New age Cyber Crimes, by Major Shirishgouda Patil (Retd) Published Jan 10, 2023

We can take a leaf out of **Singapore Integrated Regulatory Framework**[668]**,** The government of Singapore's approach to important information infrastructure protection designates specific sectors including banking, healthcare, telecommunications and government systems. The Cyber security Act ensures proactive security measures, periodical audits and incident reporting requirements.[669]

(1) Cyber courts

- Establishment of Specialized cybercrime courts, which is well connected with ICJS (Inter-Operable Criminal Justice system), secondly the technologically enabled specialized tribunals and fast-track procedures for digital offenses.
- Training programs for judicial officers and support staff
- Ensuring digital evidence collection and preservation standards for gathered digital evidence, and also cross-border/jurisdiction investigation techniques.

(2) Edge forensics

- Essential to create cyber forensic laboratories in every state in the country is very essential for evidence authentication and to support criminal prosecution.
- Deploying digital forensic capabilities directly at the edge of the network such as local police stations well connected with NCFL (National Cyber Forensic Lab)

(3) Cyber crime prevention and investigation training

Cyber degree, certificate course on cyber crime will not be sufficient and we need more experts and ethical hackers in cyber police force.

(4) Mutual Legal Assistance Treaty

A mutual legal assistance through Mutual Legal Assistance Treaty (MLAT) between countries to collect and share the information, and to formally interrogate a suspect in case the suspect resides in a foreign country.

(5) **VPN**[670] – though difficult but step towards regulations of VPN server identification as well as user identity.

(6) **Harder Punishment for Cyber criminals**, but at present the cyber crimes are being punished thro 'Organized Crime" [Sec 111] of BNS,2023 with lesser penalty and

[668] Cyber Security Agency of Singapore, 'Cyber security Act'
[669] CMS Expert Guide, 'Data Protection and Cyber security Laws in Singapore' (19 March 2025)
[670] Suggestion by a Cyber crime police official – requested, name not be referred.

imprisonment. Considering the mental harassment and loss of dignity in the society the Cyber criminals to be treated as a heinous crime.

(7) **Urgent need for Police Reforms** in India with respect to Cyber Crimes

Few case studies highlighted the importance of effective electronic evidence management in cybercrime investigations.

[671]**The Delhi University Exam Scam Case** : The Delhi University Exam Scam case involved a cybercrime syndicate that hacked into the examination systems to manipulate exam results. Investigators faced the challenge of collecting electronic evidence from various servers and devices. They employed forensic imaging and seized key digital evidence, such as log files, databases, and communication records. The proper handling and preservation of electronic evidence enabled investigators to reconstruct the chain of events and establish the involvement of the accused individuals.

The India Premier League Spot-Fixing Case : The IPL Spot-Fixing case involved a high-profile cricket betting scandal. Law enforcement agencies, with the assistance of digital forensic experts, collected electronic evidence from mobile phones, laptops, and communication networks. The investigators extracted call records, text messages, and financial transactions, which served as crucial evidence in establishing the involvement of players, bookies, and other individuals. The effective management of electronic evidence played a pivotal role in exposing the illegal activities and ensuring successful prosecutions.

[671] Source: Ref Cyber security & Privacy Journal. Notable cases sited

INSTITUTIONAL AND ECONOMIC IMPLICATIONS OF THE BHARATIYA NYAYA SANHITA REFORM

Ms. Shyne Mariya Coelho[672]

Introduction

The Bharatiya Nyaya Sanhita 2023 (BNS) was passed with the specific objective of "consolidating and amending the provisions relating to offences".[673] It seeks to modernise the legal framework relating to crime and punishment in India by updating offence classifications, streamlining statutory provisions, and aligning criminal law with contemporary socioeconomic realities. Rather than merely reproducing the IPC, the BNS introduces a new categorisation of crimes, particularly those dealing with organised crime, terrorism, digital offences, threats to social order, and reorganises offences in a more coherent and compact structure.

Enacted as part of a comprehensive legislative reform package, accompanied by other related criminal laws, the BNS marks a historic shift away from nineteenth-century structures of traditional legal rules that have historically regulated offences and penalties in India. The replacement of the IPC has been described in contemporary legislative terms as an 'exercise in modernisation' to update the substantive criminal law to accord with contemporary constitutional, technological, and criminological developments. BNS also points to a paradigm shift in the legislative mindset from a retributive colonial model to one that favours deterrence and efficacy.

The declared goals of BNS are to simplify and rationalise the definitions of offences, remove outdated provisions, and reorganise the criminal law to produce a more coherent and user-friendly body of legislation. By consolidating and amending the provisions on offences, BNS aims to clarify the criminal law and reduce its subject to interpretation.

In this capacity, the BNS does not merely represent a change in the law, but rather a change in institutions, which is likely to have considerable economic importance. From a law and economics perspective, it is possible to evaluate whether the BNS effectively promotes

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[672] Assistant Professor of Economics, KMC College of Law, Tirupur

[673] *The Bharatiya Nyaya Sanhita, 2023*, Preamble and Section 1: "An Act to consolidate and amend the provisions relating to offences…"

allocative efficiency, reduces the social costs of crime control in India, and increases incentive compatibility in the Indian criminal law system.

Law and Economics of Criminal Law: Theoretical Framework

According to the law-and-economics literature on crime, punishment primarily serves as a deterrent due to its anticipated severity and certainty, and criminal behaviour is viewed as a rational response to incentives[674]. However, later research has questioned whether deterrence-based frameworks are adequate, as the costs of punishment vary among socioeconomic groups. Danziger and Wheeler argue that criminal sanctions also have distributive effects, suggesting that the ideal crime policy has to consider efficiency and equity into account.[675] Existing analyses of criminal law reform in India have primarily focused on constitutional implications and doctrinal continuity, with limited attention paid to institutional cost structures or economic efficiency.

Gary Becker's economic model of crime: Becker's economic model of crime assumes that criminals are rational decision-makers who weigh the benefits of crime against its costs.[676]The cost of crime is measured by multiplying the probability of arrest (p) and the severity of the punishment for the crime (f). Crime occurs when the expected utility of crime is greater than that of legal business. Becker shows that any rise in the probability of arrest or the punishment for crime will decrease the expected utility of crime and thus the level of crime.

Deterrence Theory: The classical theory of deterrence has its roots in the writings of Cesare Beccaria, who asserted that the main object of punishment is not retribution but deterrence. Punishment, according to Beccaria, should serve as a means to prevent the offender from committing more crimes and to prevent others from committing crimes.[677] Beccaria clarified that punishments should be proportionate to the crime and that any punishment that goes beyond what is necessary for deterrence is unjust.[678] The classical school of economics views people as rational actors who are driven by incentives, which forms the basis of economic theories of crime.

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[674] Gary S Becker, 'Crime and Punishment: An Economic Approach' (1968) 76(2) *Journal of Political Economy* 169.
[675] Sheldon Danziger and David Wheeler, 'The Economics of Crime: Punishment or Prevention?' (1975) 23(4) *Public Policy* 445.
[676] Gary S Becker, 'Crime and Punishment: An Economic Approach' (1968) 76(2) Journal of Political Economy 169.
[677] Cesare Beccaria, *On Crimes and Punishments* (1st edn 1764, trans HC Alford, Hackett 1986) ch 12.
[678] Cesare Beccaria, *On Crimes and Punishments* (1st edn 1764, trans HC Alford, Hackett 1986) ch 6,19.

Empirical and theoretical research indicates that the probability of detection and conviction has a greater deterrent effect than an equivalent increase in the severity of punishment.[679] Although severe punishments increase the expected cost of crime, their deterrent effect is negligible if the probability of detection is small. The modern literature on law and economics highlights the importance of the certainty of punishment as a more effective and efficient deterrent than the severity of punishment.[680]

Cost–Benefit Analysis in Criminal Law: Cost-benefit analysis (CBA) is a prominent method of law and economics that evaluates criminal justice policies by calculating the costs of crime control and the benefits of crime reduction. In criminal law, the costs of crime control are measured by the expenditures on law enforcement, prosecution, courts, and corrections, while the benefits of crime reduction are derived from avoided victimisation, enhanced public safety, and overall societal order. Unlike other approaches that target the eradication of crime, CBA aims to reduce the total social cost of crime and its control, as it is understood that expenditures on crime control compete with other societal priorities. The National Institute of Justice (NIJ) has admitted that CBA "can help answer important questions about the potential costs and benefits of crime interventions."[681]

Social costs of crime and punishment

Crime control also involves high public costs in terms of finances, and these costs are not limited to the punishment of criminals. Even the process of policing and investigation involves a substantial amount of public expenditure. In India, the state governments spent around ₹77,500 crore on police in 2015-16. This expenditure accounted for around 3% of the total state budgetary expenditure, indicating the magnitude of public expenditure involved in crime control even before the cases are brought to court.[682]The expenditure is likely to increase with the incidence of crimes and the extent of criminalisation.

Court costs also underscore the need for procedural economy. The Indian judiciary has a pendency of more than five crores of cases, including a large number of criminal cases.[683]

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[679] Daniel S Nagin, 'Deterrence in the Twenty-First Century' (2013) 42 *Crime and Justice* 199.
[680] Steven D Levitt, 'Why Do Increased Arrest Rates Appear to Reduce Crime?' (1998) 6 Economic Journal 401.
[681] National Institute of Justice (NIJ), *Cost–Benefit Analysis: A Guide for Evaluating Crime Control Policies* (US Department of Justice 2014).
[682] PRS Legislative Research, *Police Reforms in India* (2017) https://prsindia.org/policy/analytical-reports/police-reforms-india
[683] India Justice Report 2025, *Ranking States on Police, Judiciary, Prisons and Legal Aid* (Tata Trusts 2025).

Delays in justice undermine the deterrent effect of punishment by reducing its certainty and speed, while incurring high costs. In conjunction with other procedural reforms introduced through the Bharatiya Nagarik Suraksha Sanhita, the BNS embodies a policy to reduce transaction costs by simplifying substantive law and expediting justice. From a law and economics perspective, procedural efficiency in enhancing certainty is often more cost-efficient than enhancing the severity of punishment.

Structural Consolidation of Criminal Laws

One of the most important changes brought about by the Bharatiya Nyaya Sanhita (BNS) is the structural consolidation of criminal law provisions that were scattered across the Indian Penal Code, 1860, and supplemented by procedural and special laws. From an administrative and economic point of view, the purpose of consolidation is to eliminate statutory fragmentation and redundancies in the law. A more integrated body of law can help to decrease transaction costs for legal actors by eliminating ambiguities and inconsistencies in the law. From the point of view of law enforcement agencies and courts, there may be economies of scale because training, interpretation, and application of the law will be more standardised.[684]

However, consolidation also involves short-term transition costs, which could counterbalance efficiency savings. Legal system participants, such as police, prosecutors, lawyers, and judges, have to adjust to new numbering, nomenclature, and categories of offences, which could lead to short-term increases in error rates, disputes, and ambiguities.[685] From a law and economics perspective, transition costs are typical of large-scale institutional change and are sunk costs that have to be balanced against efficiency savings. Furthermore, if consolidation leads to broadly worded provisions or unclearly clarified boundaries of offences, it could paradoxically lead to increased uncertainty, resulting in higher compliance and adjudication costs.[686] The economic success of consolidation, therefore, hinges not only on the statutory merger of laws but also on their clarity, internal consistency, and compatibility with existing jurisprudence.

Comparative experience from other jurisdictions supports a cautious but optimistic view. Jurisdictions such as Canada and Germany, which operate under consolidated criminal codes, benefit from greater doctrinal coherence and lower interpretive fragmentation, contributing to

[684] Robert Cooter and Thomas Ulen, *Law and Economics* (6th edn, Pearson 2016) 471–473.
[685] Douglas W Allen, *The Institutional Revolution: Measurement and the Economic Emergence of the Modern World* (University of Chicago Press 2012) 89–91.
[686] Frank H Easterbrook, 'The Limits of Antitrust' (1984) 63 *Texas Law Review* 1, 15 (on complexity and enforcement costs).

predictability and enforcement efficiency.[687] At the same time, reform processes in these jurisdictions demonstrate that consolidation must be accompanied by detailed legislative guidance and judicial adaptation to avoid destabilising settled legal expectations. Applied to the Indian context, the BNS's consolidation is likely to reduce long-term uncertainty and institutional costs if courts and enforcement agencies internalise the new structure effectively. In economic terms, while short-run complexity costs are inevitable, the long-run reduction in duplication, overlap, and interpretive conflict suggests that consolidation under the BNS has the potential to improve overall efficiency within the criminal justice system.

Penalty Reform and Deterrence

From a law-and-economics perspective, the changes in BNS can be assessed using Becker's economic theory of crime. In this way, deterrence can be improved either by raising the severity of punishment *f* (for example, by increased fines or longer prison terms) or by raising the probability of arrest *p*, through more precise definitions of offences and more efficient enforcement. The BNS's penalty rationalisation and structural consolidation may, in this way, indirectly raise *p* by reducing statutory ambiguity. At the same time, increased fines will raise the *f* without incurring the high social costs of imprisonment, thus improving deterrence at a relatively lower cost.

Although imprisonment entails high direct and indirect costs, other forms of punishment, like fines and community service, can be used for deterrence without sacrificing productive resources.[688] For instance, if the BNS raises fines for crimes like theft but allows community service for petty crimes, the marginal cost of crime could increase even if imprisonment is not imposed. This is because the trade-off between punishment and freedom can be seen as a fundamental message of deterrence theory. A punishment that is moderate but credible can be more effective in deterring crime than a severe punishment that is not credible.

These reforms also echo Beccaria's classical proportionality requirement. Beccaria held that punishments should not be greater than what is necessary to deter crime and should be proportionate to the social harm caused.[689] While the BNS introduces a greater distinction between serious and less serious offences and introduces lower-cost options for less harmful

[687] Andrew Ashworth and Lucia Zedner, *Preventive Justice* (Oxford University Press 2014) 52–54.
[688] Mark A R Kleiman, *When Brute Force Fails: How to Have Less Crime and Less Punishment* (Princeton University Press 2009) 45–47.
[689] Cesare Beccaria, *On Crimes and Punishments* (1764) (Henry Paolucci tr, Bobbs-Merrill 1963) ch XII.

behaviour, it still falls short of proportioning the severity of punishment to the harm caused. This is because proportionality is not merely dependent on the legislative framework but also on judicial discretion. Too much discretion may vitiate deterrence and economic efficiency. The BNS's penalty reforms, therefore, indicate a balance between deterrence and cost minimisation, consistent with Beckerian rational choice theory and Beccarian proportionality.

Impact on Economic Efficiency

The efficiency of criminal law reform is contingent on whether changes in institutions lead to a decrease in the total social cost of crime, which encompasses the cost of enforcement, punishment, and harm to victims. By adjusting the scales of punishment and introducing more monetary punishments and non-custodial sentences, the BNS raises the expected social cost of crime in a way that better approximates the social harm caused by crime, without overemphasising the use of imprisonment. The increased use of fines and tiered systems of alternative punishment internalises social harm without suffering from the high fiscal and social costs of imprisonment. In this respect, the BNS partially offsets the incentive distortions created by the overuse of imprisonment for low-social-harm crimes. The extent to which private incentives can be made more congruent with social costs is dependent on strong enforcement and judicial compliance. Without sufficient certainty of punishment, even economically rational punishments may not attain their intended goal.

The cost imposed by prisons is one of the most observable and enduring. Indian prisons run at about 120-121 per cent of their sanctioned strength, accommodating 5.3 lakh prisoners in facilities designed for 4.39 lakh inmates.[690] The ever-present problem of overcrowding increases the cost per prisoner and affects health, security, and rehabilitation. Community services emphasised in BNS can help alleviate the chronic problem of overcrowding in Indian prisons. When subjected to cost-benefit analysis, this criminal law reform has obvious economic benefits. Community service leads to a substantial decrease in the cost of incarceration, which includes the cost of prison maintenance, personnel, and long-term social costs of marginalisation and reduced productivity of offenders.[691] Nevertheless, these gains should be considered in light of the possible deterrence benefits.

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[690] National Crime Records Bureau, *Prison Statistics India 2023* (Ministry of Home Affairs, Government of India 2024).

[691] Mark A R Kleiman, *When Brute Force Fails: How to Have Less Crime and Less Punishment* (Princeton University Press 2009) 58–60.

The BNS's reform agenda, when considered in conjunction with other procedural reforms such as the digitisation of records (ss 173, 176 BNSS), simplified investigation procedures, and the encouragement of fast-track adjudication, indicates an efficiency-oriented approach. Delays in procedures result in high social costs, including the reduction of deterrence and the postponement of compensation for victims. Thus, the reduction of case pendency and the improvement of case management can yield high welfare gains, including the certainty and speed of justice.[692] From an economic perspective, fast-track adjudication increases deterrence without increasing the severity of punishment and decreases administrative costs per case. However, these reforms may entail higher initial costs, including investments in police resources and training. These costs are short-term and should be considered in relation to long-term savings.

Cost-benefit analysis offers a systematic approach to balancing these considerations. The National Institute of Justice warns that CBA must consider not only direct financial costs but also more intangible benefits like the reduction of victim pain, increased public trust, and overall social order.[693] Although these benefits are hard to measure with exactitude, failure to include them may overlook the true value of criminal justice reform. In regard to the BNS, the effectiveness of reforms like community service, digitisation, and procedural simplification ultimately rests on their ability to affect crime rates and enforcement certainty. However, from the perspective of cost-benefit analysis, the BNS reflects an organisational change in cost-effective deterrence, aiming to maximise public security while keeping the economic and social costs of punishment in check.

Conclusion

The Bharatiya Nyaya Sanhita (BNS) is a step in the right direction, albeit a cautious one, towards a more economically rational system of criminal justice. Using Becker's model of crime, it appears that the BNS is likely to have a moderate effect on overall deterrence, mainly through enhancing the certainty (p) rather than significantly increasing the severity (f) of punishment. Consolidation of offences and a clearer definition of crimes may help to eliminate statutory vagueness and disputes over interpretation, thus improving the predictability of enforcement and increasing the expected punishment for would-be offenders. On the other

[692] Daniel S Nagin, 'Deterrence in the Twenty-First Century' (2013) 42 *Crime and Justice* 199, 211–213.
[693] National Institute of Justice (NIJ), *Cost–Benefit Analysis: A Guide for Evaluating Crime Control Policies* (US Department of Justice 2014).

hand, selective increases in fines and the rationalisation of punishment levels indicate an increase in P without a corresponding rise in imprisonment, suggesting a deterrence policy that aims for efficiency rather than severity.

Cost-benefit analysis also shows that most of the reforms introduced by the BNS can enhance institutional and economic efficiency in the long run. This is because the process of consolidation will eliminate duplication of laws, while alternative sentences, such as community service, are less costly compared to imprisonment. However, it is important to note that there are trade-offs associated with the efficiency gains. In the short run, for instance, transition costs such as retraining, legal reorientation, and interpretive uncertainty may result in increased adjudication costs and enforcement errors. On the same note, although tougher penalties for specific crimes may result in increased deterrence, they may also result in increased enforcement costs or hardship if they are not applied uniformly.

From a policy point of view, the law and economics approach to the new law indicates that the future success of the BNS will depend less on further toughening the severity of punishments and more on enhancing the certainty, speed, and credibility of enforcement. Expenditures on detection capacity, procedural rationality, and judicial consistency are likely to provide higher marginal benefits of deterrence than tougher punishments. Furthermore, tailoring punishments to better measure social harm, while increasing the use of lower-cost reformative punishments for less serious crimes, may help to better align deterrence with the overall criminal justice agenda. In this regard, the BNS seems to signal a gradual shift away from a purely punitive approach and towards a more balanced approach that seeks to combine deterrence with reformative justice. A law and economics approach, therefore, recommends that the next phase of criminal justice reform in India should continue to focus on proportionality, enforcement certainty, and capacity-building.

DIGITAL DIVIDE AND THE RIGHT TO ACCESS COURTS: A STUDY OF E-FILING IN INDIA

Mr. S. Aswin Prasanna*, *Mr. P. Kavin Nithesh Kumar [694]

I. Introduction

The digital transformation of judicial processes globally holds the promise of greater efficiency, transparency, and access. In India, the e-Courts Mission Mode Project began in 2007 as part of the National e-Governance Plan, with e-filing of cases emerging as a core innovation that allows litigants and advocates to file pleadings and documents online 24/7, thereby reducing physical barriers to justice.

However, while electronic filing (e-filing) streamlines procedural aspects of litigation, it also reveals deep socio-economic divides that impede meaningful access to justice for many citizens. Digital infrastructure, literacy gaps, language barriers, and inconsistent implementation across jurisdictions undermine the constitutional mandate of equal access to courts - a facet of the right to life and personal liberty under Article 21 of the Constitution of India.[695]

This paper critically examines whether e-filing has advanced substantive access to judicial processes or has instead exacerbated the digital divide, excluding the most vulnerable. It analyses case law, institutional reforms, real-world implementation challenges, and proposes recommendations to bridge procedural efficiency with equitable access.

II. Constitutional Framework: Access to Justice and Article 21

Article 21 of the Indian Constitution guarantees the fundamental right to life and personal liberty. It states "*No person shall be deprived of his life or personal liberty except according to procedure established by law"*[696]. In seminal decisions such as *Maneka Gandhi v. Union of India*[697], the Supreme Court widened the scope of Article 21 to include procedural fairness and dignity. Subsequent jurisprudence has recognised access to justice as intrinsic to

[694] Students, III LLB., KMC College of Law, Tiruppur
[695] INDIA CSR, https://indiacsr.in/digital-access-right-to-life-article-21-supreme-court-india

[696] INDIA CONST. art. 21
[697] Maneka Gandhi v. Union of India 1978 AIR 597

this right[698]. An emerging judicial trend now includes digital access itself as part of Article 21; in a 2025 ruling, the Supreme Court held that inclusive access to digital platforms for essential services is integral to the right to life and liberty. Therefore, the constitutional challenge is not merely to adopt technology but to ensure that digitisation does not become a barrier to the equitable delivery of justice.

III. The E-Courts Initiative and E-Filing in India

A. Evolution of E-Courts Project

India's e-Courts Project has progressed in phases:

1. **Phase I (2007 - 2015)** - The first phase of the E-Courts Project primarily focused on establishing the technological foundation necessary for digitising court operations. Prior to this phase, the Indian judicial system largely relied on manual processes, paper-based records, and physical registers. The objective of Phase I was therefore to introduce basic computerisation in district and subordinate courts across the country.

   Under this phase, courts were equipped with essential hardware such as computers, servers, printers, and networking infrastructure. Workstations were set up for judges and court staff to enable digital handling of basic administrative tasks. A major innovation introduced during this stage was the Case Information System (CIS), which allowed courts to maintain electronic databases of cases, parties, and judicial orders. This system helped streamline case management and made record-keeping more organised and efficient.

   Another important feature of Phase I was the introduction of online access to case status and cause lists. Litigants and lawyers could now obtain information about hearing dates, case progress, and court schedules through online platforms rather than relying solely on court clerks. Additionally, judicial service centres were established within court premises to help litigants access digital case information. The digitisation of court records also began during this stage, although the process was limited and gradual.

[698] Indian kanoon, https://indiankanoon.org/doc/1766147/

Overall, Phase I marked the judiciary's first major step towards technological adoption by creating the basic digital infrastructure necessary for future reforms. However, the system continued to rely largely on physical filing and traditional procedures.[699]

2. **Phase II (2015 - 2023)** - The second phase of the E-Courts Project sought to move beyond basic computerisation and introduce digital services that directly impacted litigants, advocates, and court functioning. The goal was to improve accessibility, transparency, and efficiency in judicial administration through the use of technology.

   One of the most significant developments during this phase was the introduction of **e-filing systems**, which enabled advocates and litigants to file cases, pleadings, and documents online. This reduced the need for physical visits to court registries and allowed filings to be made remotely. Alongside e-filing, the judiciary also introduced **online payment systems for court fees and fines**, making financial transactions within the court system more convenient and transparent.

   Another landmark development during Phase II was the creation of the **National Judicial Data Grid (NJDG)**. This online database provides detailed information about millions of pending and disposed cases across district and high courts in India. By offering real-time statistics on case pendency, case disposal rates, and judicial performance, the NJDG has significantly improved transparency and policy planning within the judicial system.

   Phase II also saw the expansion of **video conferencing facilities and virtual courts**, which enabled remote hearings in certain types of cases, particularly remand proceedings involving undertrial prisoners. This reduced the logistical burden of transporting prisoners to courts and improved efficiency in criminal proceedings. Additionally, mobile applications such as the **eCourts Services App** were introduced to provide litigants with easy access to case information, orders, and judgments through smartphones.

   These developments greatly improved the efficiency of judicial administration and played a crucial role during the COVID-19 pandemic, when courts relied heavily on digital platforms

[699] Lawful legal, https://lawfullegal.in/e-courts-in-indiareshaping-the-judicial-system-through-technology

to continue functioning. However, this phase also exposed challenges related to digital literacy, uneven infrastructure, and accessibility gaps.[700]

3. **Phase III (2023 - ongoing)** - The third phase of the E-Courts Project represents a more advanced stage of judicial digitisation aimed at creating a fully integrated and technology-driven justice delivery system. Unlike earlier phases, Phase III places strong emphasis not only on technological advancement but also on inclusivity and accessibility.

   One of the central objectives of this phase is the **complete digitisation of court records**, enabling courts to operate in a paperless environment where judges and lawyers can access case files electronically. This transition is expected to improve efficiency, reduce storage challenges, and streamline case management processes.

   Phase III also seeks to develop a **unified digital platform for courts**, allowing seamless integration of e-filing, case management systems, and digital document access across various levels of the judiciary. The e-filing system is being further strengthened and standardised so that litigants can access similar services across different jurisdictions.

   To address concerns regarding digital exclusion, the government has introduced **e-Sewa Kendras** within court complexes. These centres provide assistance to litigants who may lack digital literacy or access to technology. Staff at these centres help individuals file cases online, check case status, and obtain digital copies of court documents.

   Another significant feature of Phase III is the incorporation of **artificial intelligence and advanced digital tools** to assist judicial administration. These technologies may be used for tasks such as document translation, case categorisation, and legal research support. Efforts are also being made to improve multilingual accessibility so that digital court systems can operate in multiple Indian languages.

   Additionally, the third phase emphasises strengthening **cybersecurity and data protection mechanisms** to safeguard sensitive judicial information stored in digital systems.

[700] Lawful legal, https://lawfullegal.in/e-courts-in-indiareshaping-the-judicial-system-through-technology

Overall, Phase III represents an effort to create a modern, paperless, and integrated judicial ecosystem while simultaneously addressing concerns about accessibility and digital inclusion[701].

The current iteration aims not only to improve technology but also to promote **"access and inclusion."**

B. E-Filing System Features

The government's official portal (filing.ecourts.gov.in) enables advocates and litigants to:

- File documents digitally from any location
- Upload pleadings, applications, and indexed exhibits
- Undertake video-recorded oath submission and
- Access tutorials and support resources[702].

This digital framework theoretically reduces travel costs, minimizes court congestion, and establishes traceable records.

IV. Pros of E-Filing: Efficiency and Transparency

A. Procedural Efficiency

E-filing eliminates physical queuing, decreases human error (such as manual data entry), and allows round-the-clock filing. This transformatively reduces logistical burdens on litigants, especially those with mobility constraints[703].

B. Transparency and Accountability

The digital system allows real-time tracking of case status, promotes accountability of registry functions, and integrates with other systems (like e-payment of court fees). It has

[701] E-committee, Supreme court of India, https://ecommitteesci.gov.in/project/brief-overview-of-e-courts-project/

[702] Department of Justice, https://doj.gov.in/efiling/

[703] Department of Justice, https://doj.gov.in/efiling/

contributed to procedural standardization across courts, offering litigants a consistent interface[704].

C. Institutional Recognition of Digital Access

Judicial reforms extend beyond e-filing: High courts (e.g., Delhi High Court) have launched mobile apps to provide easier access to court services, and translations of judgments into multiple Indian languages aim to overcome linguistic barriers.

V. The Digital Divide: Structural Barriers to Meaningful Access

Despite its promise, e-filing exposes stark inequalities:

A. Digital Literacy and Infrastructure Gaps

Rural areas and economically disadvantaged groups often lack reliable internet, modern devices, or digital skills. These deficits make engagement with e-filing portals functionally inaccessible to the very populations the judiciary purports to serve.

B. Portal Usability Issues

Studies and reports indicate inconsistent and confusing e-filing interfaces, unclear error messages, and disparate systems across high courts and the Supreme Court, hindering smooth user experience.

C. Real-World Reports of System Failure

Informal accounts (e.g., users struggling with e-Jagriti or e-Daakhil portals) reveal that litigants have been forced to revert to physical filings despite digital requirements, undermining the premise of e-access.

[704] Department of Justice, https://doj.gov.in/efiling/

VI. Technology and Access to Justice

A. Virtual Proceedings and Access

In *Swapnil Tripathi v. Supreme Court of India*[705], the Court endorsed live streaming of proceedings as advancing transparency and access, reinforcing Article 21. This paved the way for the introduction of the pilot program inspired by countries like the UK and the USA. The guidelines were set to protect privacy and excludes sensitive cases[706].

In *Krishna Veni Nagam v. Harish Nagam*[707], the Court recognised the role of video conferencing in reducing burdens on litigants, particularly in personal law cases, as an alternative to carrying out the transfer of cases[708].

The 2025 Supreme Court decision affirming digital access as integral to Article 21 pushes courts to consider digital inclusion as a constitutional obligation.

VII. Policy and Implementation Challenges

Despite the ambitious goals of the E-Courts Mission Mode Project and the gradual adoption of e-filing systems across Indian courts, the transition from traditional procedures to digital justice delivery has not been without difficulties. The shift toward technological integration in the judiciary has exposed structural challenges within India's legal system and its broader socio-economic landscape. These challenges operate at multiple levels, including infrastructure, institutional capacity, digital literacy, and procedural uniformity.

A. Uneven Adoption Across Jurisdictions

One of the most significant challenges relates to uneven digital infrastructure across different regions of the country. While metropolitan courts and major High Courts have relatively advanced technological systems and reliable internet connectivity, many district and subordinate courts in rural or semi-urban areas continue to face basic infrastructural limitations. Inadequate internet bandwidth, outdated hardware, and inconsistent maintenance of digital

[705] Swapnil Tripathi v. Supreme Court of India AIR 2018 SUPREME COURT 4806
[706] Global freedom of expression, https://globalfreedomofexpression.columbia.edu/cases/tripathi-v-supreme-court-india/

[707] Krishna Veni Nagam v. Harish Nagam AIR 2017 SUPREME COURT 1345
[708] Ipleaders, https://blog.ipleaders.in/krishna-veni-nagam-v-harish-nagam-air-2017-sc-1345-case-analysis/

systems often lead to interruptions in the e-filing process. For litigants and advocates who rely on these systems, even minor technical failures can result in delays in filing pleadings or accessing court documents. This disparity highlights the broader issue of the digital divide between urban and rural regions, which inevitably affects the accessibility of digital court services.

Another challenge arises from the lack of uniform implementation across different courts and jurisdictions. Although the e-Courts Project aims to create a unified digital framework, the practical reality is that many High Courts have developed their own separate e-filing rules, platforms, and procedural requirements. As a result, advocates who practice across multiple jurisdictions often face difficulties adapting to different digital systems. Variations in document formats, filing procedures, and technical specifications can create confusion and increase the likelihood of procedural errors. For litigants who may already be unfamiliar with legal procedures, these inconsistencies further complicate their ability to access the system effectively.

B. Linguistic and Social Barriers

The social and linguistic diversity of India presents a further challenge in implementing digital court systems. Many litigants are more comfortable communicating in regional languages rather than English, yet most digital platforms currently operate primarily in English or limited regional languages. This linguistic barrier can discourage individuals from using e-filing systems independently and may prevent them from fully understanding the procedural requirements involved in digital filings.

A related concern involves the digital literacy gap among court users, including litigants, lawyers, and even some court staff. While younger advocates and law firms may be comfortable using digital platforms, many litigants—particularly those from rural backgrounds, economically weaker sections, or older age groups—may lack the necessary technological skills to navigate e-filing portals. The reliance on English-language interfaces and technical legal terminology further compounds this difficulty. In such situations, litigants often become heavily dependent on intermediaries or legal professionals to complete the filing process, which may increase litigation costs and undermine the objective of simplifying access to justice.

C. Competent Technical Staff and Administrative Personnel

Institutional capacity within courts also presents important implementation challenges. The successful operation of digital systems requires trained technical staff and continuous administrative support. However, in many courts, existing personnel must manage both traditional administrative duties and digital systems simultaneously. This dual responsibility can lead to delays in verifying e-filed documents, processing digital records, or resolving technical issues reported by users. Without adequate training and dedicated IT personnel, even well-designed technological systems may fail to function effectively in practice.

D. Information Security Factors

Cybersecurity and data protection concerns also deserve attention in the context of digital courts. As judicial records, pleadings, and sensitive personal information become increasingly digitised, the risk of data breaches or unauthorised access becomes more significant. Ensuring secure storage of digital case files, protecting confidential information, and maintaining the integrity of judicial records are critical responsibilities that require robust cybersecurity infrastructure and clear protocols.

E. Technical Support and Legal Aid

Support services like e-Sewa Kendras are meant to help people who are unfamiliar with digital systems. However, many such centres are missing, understaffed, or not well-known. As a result, people who need help often cannot get it when filing cases online. Taken together, these challenges demonstrate that the success of judicial digitisation depends not only on technological innovation but also on careful consideration of institutional capacity, social realities, and accessibility concerns.

VIII. Recommendations to Bridge the Divide

A. Expand Assisted Filing Centres

One of the most practical measures that can be implemented is the expansion of assisted e-filing centres within court complexes, commonly referred to as e-Sewa Kendras. These centres can serve as support hubs where trained personnel assist litigants in filing cases electronically, uploading documents, and checking case status. By providing on-site guidance,

such centres can help individuals who lack digital literacy or access to personal computers navigate the e-filing process. To maximise their effectiveness, these centres should be adequately staffed and equipped with reliable internet connectivity and updated computer systems.

B. Multilingual Interfaces

Another important recommendation involves developing multilingual and user-friendly digital interfaces for e-filing portals. Considering India's linguistic diversity, digital platforms should be accessible in multiple regional languages and designed with simple navigation features that allow users to understand filing procedures without requiring advanced technological knowledge. Clear instructions, visual guides, and tutorial videos can significantly improve user experience and reduce the likelihood of procedural errors.

C. Robust Training Programs

Capacity building within the judiciary is equally important. Regular training programmes for judges, court staff, and advocates should be conducted to familiarise them with digital systems and ensure efficient handling of e-filed cases. Law schools and universities can also play a constructive role in this process. For example, students participating in legal aid clinics or internship programmes can assist court staff and litigants in learning how to use e-filing systems. Such initiatives would not only support the functioning of courts but also provide practical training opportunities for future legal professionals.

D. Involvement of Educational Institutions

Educational institutions can further contribute by organising digital literacy workshops focused on legal technology, where law students collaborate with bar associations and court administrators to train advocates and litigants in the use of digital court services. These workshops could be particularly beneficial in district courts where access to technological guidance may be limited.

E. Development of Mobile Apps

The judiciary could encourage the development of mobile-based legal service applications that allow litigants to track case status, receive hearing notifications, and access court orders through smartphones. Since mobile phone penetration in India is significantly

higher than computer access, such applications could make digital justice more accessible to a wider population.

F. Synergy between Courts and Other Organs

Another practical step involves strengthening collaboration between courts, bar associations, and civil society organisations. Bar associations can establish volunteer programmes where young advocates assist litigants in completing digital filing procedures. Non-governmental organisations working in the field of legal aid and digital literacy can also partner with courts to spread awareness about the availability of e-filing services.

G. Reliable Digital Infrastructure and Cybersecurity

Policymakers should continue investing in reliable digital infrastructure and cybersecurity measures to ensure that the judicial system remains both accessible and secure. Courts should collect data on how many people are unable to use e-filing systems and why. This data should be reviewed regularly so that problems can be identified early and solutions can be introduced to ensure fair access for all.

IX. Conclusion

E-filing and digital court initiatives represent a positive step in modernising India's justice system. When effectively implemented, they promote efficiency, transparency, and citizen convenience. However, without addressing the digital divide, these reforms may inadvertently privilege the technologically literate while leaving behind vulnerable populations.

Access to justice is a constitutional imperative under Article 21, and as the Supreme Court's progressive rulings indicate, true access must include digital inclusion. The challenge before policymakers and the judiciary is to ensure that justice is not merely electronically available, but equitably accessible to all Indians.

PLENARY SESSION ON THE NATIONAL SEMINAR

REFORMING THE CRIMINAL JUSTICE SYSTEM

Evaluating the Efficacy of India's New Criminal Laws

Prof. Dr. SRIKRISHNA DEVA RAO

Criminal Justice Reforms in India

Background to Reform Colonial era laws

The recent criminal justice reform with enactment of three new criminal laws, represents the most comprehensive modernization of criminal law in the nation's post-colonial history. It replaced the 164-year-old *Indian Penal Code of 1860,* the *Code of Criminal Procedure, 1861* and *Indian Evidence Act, 1872*. They were remarkable pieces of legislations in their own spheres and withstood the test of time. IPC has been an admirable substantive criminal law and similarly the Evidence Act is another master classic law.

The First Law Commission in British India under *Thomas Babington Macaulay* did a marvelous job of preparing the IPC on the lines of English Criminal law. However, it was influenced by paternalistic notions and imperialist concerns. The I.P.C. broadly remained unaltered over past 170 years. There have been piece-meal amendments in IPC more than 70 occasions as per the needs of the State as well as the society. Some sections, such as, Sec.303, 377 and 497 of IPC were struck down by the Supreme Court of India as unconstitutional. The existing offences were extensively modified and several new offences were also added in 1984, 2013 and 2018. In spite of these comprehensive reforms in IPC have been fewer and far between.

The Code of Criminal Procedure was amended in 1898 and more reforms in 1973. The law of criminal procedure has developed in a similar tangent. The criminal justice system suffers from delays at investigation and trial which negatively impact the rights of both the accused and the victim. The absence of sentencing policy and detailed guidelines left unguided discretion in awarding punishments and deterred better and effective sentencing justice. New modes of alternatives to punishments need to be explored. The tortification of criminal law has emerged as the new paradigm shift in criminal justice.

The significant reforms in criminal procedure were related to rape laws and gender-based violence, prosecution services and procedural safeguards for the accused as well as victims. Broad-based recommendations to improve the criminal justice system were also proposed by

the *Justice Malimath Committee* (2003) and the *Prof. Menon Committee* (2007) and the recommendations of the *Justice Verma Committee* (2013) were reflected in the Criminal Law (Amendment) Act, 2013.

Sir James Fitzjames Stephen was instrumental in developing the Evidence law. Since 1872, the Evidence Act, has functioned without many amendments, broadly retaining its fundamental principles regarding relevancy and proof. Yet, the developments in human rights jurisprudence as well as advances in technology have prompted recommendations and amendments to the Evidence Act. Some of the significant amendments include the determination of relevancy and admissibility within the contours of the Act and amendments pertaining to dowry deaths, cruelty to women, rape laws and electronic evidence. It is also time to remove the obsolete references and presumptions and clarify ambiguous language and the scope of provisions.

I. Constitutionalisation of criminal law

Criminal law and its processes evoke more passionate dialogue than any other branch of law due to its impact on freedom and liberties on the rights of the citizens. It also brings the issue of drawing a fine balance between prerogative of the state and liberties of an individual and to safeguard the core human rights such as life, dignity and equality. The constitutional norms and human rights values behind the protection of these core human rights are of a particular strong character and always it is in a continuous confrontation with power of the state.

Many of these principles and values of human rights were adapted in the Indian Constitution in 1950 through Part III on Fundamental Rights of individuals, obligating the state to protect these rights. The criminal laws are also benchmarked on right to equality (Article 14); the right to freedoms and liberties (Art.19), right to life and personal liberty (Article 21); and to ensure fair trial and protection from arrest and detention in certain cases (Article 22) including providing free legal aid through Article 39-A.

Understanding of gender and sexuality are very relevant in making of criminal law. Recognising the autonomous rights of women, the bodily integrity issues started rising from *post-Mathura case* in the Eighties which were reiterated in the open letter to Chief Justice of India by four law professors. The reform of Rape laws gained momentum after Mathura case and resulted in amendments to IPC, Criminal procedure and Evidence law. Again, *post-Nirbhaya case* initiated another round of reforms with establishment of *Justice J.S. Verma Committee* and passing of the Protection of Children from Sexual Offences Act, 2012.

Courts repeatedly encountered situations where criminal statutes contradicted constitutional provisions as exemplified by the Supreme Court's 2018 decision in *Navtej Singh Johar v. Union of India*, decriminalizing consensual same-sex conduct by reading down Section 377 as unconstitutional, or the 2018 *Joseph Shine v. Union of India* judgment striking down adultery as an offense. These judicial interventions exposed not mere technical deficiencies but fundamental philosophical misalignments requiring comprehensive statutory reform rather than incremental amendments.

Parity has to be brought between sexual offences by allowing protection to sexual and gender minorities which have been excluded until now. Similarly, the removal of marital exemption from section 375 furthers the cause of women's individual and sexual autonomy.

The move towards constitutionalism in the administration of criminal justice began in late seventies and early eighties in the post-emergency era that was instrumental in developing the rights-based jurisprudence. It humanised the criminal justice system especially in matters of arrest, detention and bail, filing of First Information Reports, constitutionality of the death penalty and protection of women's rights.

The emerging principles of De-criminalisation, De-Penalisation and unburdening of criminal laws through "diversion" and alternatives to punishments were guiding principles for criminal law reform. The criminal justice system needs to explore alternatives to punishments such as probation and community sentences and incentivise plea bargaining and compounding of offences. It has to 'read down' of offences through summary trials to ensure that imprisonment is used only where ever required.

Ensuring "fairness" in investigation and trial requires providing legal aid at every stage of criminal justice process, be it in police station, prison, court including the Inquest proceedings. To protect the rights of the accused and to instil confidence in the fairness of the system, discretion to exclude evidence obtained by illegal or unfair means is essential in a rights-based criminal justice system. In furtherance of fair trial objectives in the law of evidence, recommendations have also been made to enhance the opportunity for all parties to adduce evidence.

The modern criminal law also underscored rights of victims in the various stages of the criminal justice process and important rights such as the right to information and the right to

participation. It also advocated measures to institutionalise rehabilitative justice as well as the healing and restoration of victims of crime as an important goal of criminal law. The safety and privacy of witnesses were also taken care in the report. The witnesses were also provided an opportunity to adduce evidence to confirm their credit, where their credit has been impeached under the Evidence law.

The **trilateral reform** encompassing the **Bharatiya Nyaya Sanhita** (substantive criminal law), **Bharatiya Nagarik Suraksha Sanhita** (criminal procedure), and **Bharatiya Sakshya Adhiniyam** (evidence law) fundamentally recalibrates India's entire criminal justice framework. It dismantles the inherited colonial structures and navigates technological change along with the constitutional and human rights obligations.

India's criminal justice reform has its roots in the framing of its Constitution in 1950 and has evolved through multiple phases, reflecting changing constitutional values, social realities, and institutional capacities. Among its earliest corrective measures in 1952 was the *repeal of the Criminal Tribes Act of 1871,* a law that branded entire communities as inherently criminal. This marked a foundational attempt to *dismantle colonial structures of suspicion and exclusion*. In that same spirit, India's commitment to criminal law reform remains ongoing and deliberate.

BNS introduced statutory definitions for contemporary crime categories including organized crime, terrorism, and mob violence that the colonial-era IPC could not have anticipated. The *BNSS* 2023 embodies a philosophical shift from purely retributive punishment toward balanced approaches integrating rehabilitation and restorative justice. *BSA* 2023 modernizes evidentiary standards for digital-age criminality. Let me briefly analyse the key changes introduced in the BNS, BNSS and BSA.

BHARATIYA NYAYA SANHITA, 2023

The Bharatiya Nyaya Sanhita, 2023, hereinafter called as BNS, is a substantive criminal legislation that has replaced Indian Penal Code, 1860. Apart from the modification to the organisation of provisions, several substantive variations have been made.

Consolidation of similar provisions: BNS streamlined and consolidated the provisions under IPC, from 511 sections to 358 sections. It consolidated various provisions relating to the same

offences, such as Section 317 of BNS consolidates all the provisions relating to stolen property under IPC, which were set out in Sections 410 to 414. **Similarly,** provisions relating to all three inchoate offences, i.e., "attempt", "abetment" and "conspiracy", have been brought together under Chapter IV of the BNS. Earlier, "abetment" and "conspiracy" were covered from Section 109 to 120 and 120A & 120B in the IPC, and "attempt" was under Section 511 of IPC.

Gender Neutrality: Efforts have been undertaken to promote **gender neutrality** in criminal laws by expanding the definition of the term gender. Additionally, several offenses, including voyeurism and assaulting someone with the intent to disrobe, have been made gender-neutral from the perpetrator perspective. All the offences against women and children have been brought under Chapter V of the BNS, which is followed by the offences affecting human body in Chapter VI.

One commendable aspect of the BNS is removal of remnants of colonial references and archaic language. BNS uniformly uses, **sensitive language. It used** the term/expression "child" in place of "minor" and "child under the age of eighteen years", and "person with unsound mind" in place of "insane", "lunatic", and "idiot".

The **age disparity** between girls and boys, stemming from the socio-political conditions of the 19th century, has been appropriately rectified by the BNS. The age criterion for kidnapping victims has been standardized at 18 years, regardless of gender. In the light of the judicial pronouncement in **Independent Thought v Union of India (2017) 10 SCC 800**, the age bar under the clause has finally been raised to 18 years in the text of law as well amending Exception 2 to Clause 63 of BNS.

Offences against human body: The offence of attempt to commit suicide has been removed from the BNS. However, a new section has been added which criminalises the attempt to commit suicide to compel or restrain exercise of lawful power by a public servant. A sub-category of culpable homicide has been introduced under Section 103 of the BNS, relating to mob-lynching. It criminalises and provides punishment for murder and/or grievous hurt by "group of five or more persons" based on victim's "race, caste or community, sex, place of birth, language, personal belief or any other similar ground".

Organised crimes and terrorist acts

Key changes in punishments:

For the first time in India, **community service** has been introduced as a punishment for certain offences under Section 4(f) of BNS in cases of minor **six offences.** Namely, a public servant unlawfully engaging in trade, non-appearance in response to a proclamation, attempt to commit suicide to compel or restrain exercise of lawful power, petty theft (of property less than INR 5,000/- in value) upon return of the property by a first-time offender, misconduct in public by a drunken person.

A significant modification is evident in the BNS, wherein there is an overall increase in the severity of punishments, particularly in terms of the fines.

The debate on whether the right to life includes the right to die has concluded with the BNS, which no longer criminalizes attempts to commit suicide. It is gratifying to observe that this progressive perspective has also been integrated into the penal statute. New offences like sexual intercourse by deceitful means or on the pretext of false promise to marry, hit and run, organised crimes, terrorism, etc. have found place in BNS.

BNS retains the essence of the offence of sedition as 'acts endangering sovereignty, unity, and integrity of India'.

BHARATIYA NYAYA SURAKSHA SANHITA, 2023

The majority theme of the changes in BNSS can be categorised as a move towards 21st century by integrating latest audio-visual electronic means in the investigative processes. This is aimed at increasing transparency and accountability. The use of audio-visual recording is intended to ensure that the criminal justice process is transparent and accountable to all stakeholders, including the accused, the victims, and the public.

By recording all aspects of the criminal justice process, including searches and seizures, FIRs, statements, and trials, the BNSS aims to create a more reliable and trustworthy system. This is because audio-visual recordings can be used to verify the accuracy of witness testimony and to

ensure that the accused are not subjected to abuse or ill-treatment. In addition, the use of audio-visual recording can help to deter corruption and malpractice in the criminal justice system. By making the process more transparent, it will be more difficult for police officers and other officials to engage in illegal or unethical conduct. Hence, the use of audio-visual electronic means in the BNSS is a positive step towards a more transparent and accountable criminal justice system in India.

BNSS has sought to make the investigation process more robust and efficient. By introduction of Section 176(3) to the BNSS, it has been mandated that forensic team must visit the site of crime and collect relevant forensic evidence, whenever the police receive information about commission of an offence if it carries a punishment of 7 years or more. They would also carry out videography of the entire procedure. If such an expert is not available within the jurisdiction of a state, forensic facilities of other states can also be used till the time the same is not developed in the concerned state.

Zero FIR: A significant alteration concerning the registration of FIRs is the codification of the "Zero FIR" concept,[22] making it obligatory for police stations to register an FIR upon receiving information about a cognizable offence, regardless of jurisdiction. The Zero FIR concept was first introduced by the Justice Verma Committee recommendations which was set up in 2012 pursuant to the infamous Nirbhaya case.[24] A Zero FIR can be filed at any police station, irrespective of its jurisdiction. Subsequently, the concerned police station must transfer the Zero FIR to the appropriate jurisdiction for investigation. This has been discussed in detail in Part D hereinbelow.

Power to postpone or adjourn proceedings curtailed: Under Section 309 of the CrPC, the court had unlimited power to grant adjournments if the circumstances are beyond the control of the party seeking adjournment. The power of the court to postpone/adjourn proceedings has been curtailed by way of Proviso (b) to Section 346(2) of the BNSS. Under the BNSS, where the circumstances are beyond the control of a party, **not more than two adjournments** may be granted by the court after hearing the objections of the other party and for the reasons to be recorded in writing.

Protection of interests of victims: The Withdrawal from prosecution will only be permissible pursuant to the victim being granted an opportunity to be heard**:** Section 321 of the CrPC

previously allowed withdrawal of prosecution of a person, with the consent of the court and before pronouncement of judgment. Section 360 of the BNSS now provides that such withdrawal can only be done after giving the victim an opportunity of being heard. The police officer is required to update the informant or victim of the investigation's progress within a 90-day period, which time frame was not previously provided under Section 173 (2)(ii) of the CrPC.

Witness Protection Scheme: Section 398 of the BNSS stipulates that each State Government is required to formulate and announce a witness protection scheme.

The **introduction of express timelines** in the BNSS marks a significant change towards an effective criminal justice system. Unlike the CrPC, the BNSS meticulously provides specific timeframes for crucial procedures within the justice system. For instance, the police officer is required to update the informant or victim on the investigation's progress within a 90-day period; the Magistrate must furnish documents to the accused without delay and, in no case, beyond 14 days from the accused's production or appearance; charges are to be framed within 60 days from the first date of hearing on charge (trial before a court of Sessions and Magistrate). A judgment of acquittal or conviction (trial before a court of Session) has to be passed within 30 days from completion of arguments which can be extended by 45 days only by giving specific reasons.

BHARATIYA SAKSHYA ADHINIYAM, 2023

Evidence can be a make-or-break in most cases, especially those in which allegations of offences are placed upon individuals or organizations for offences or crimes. The legal realm of Evidence has seen some changes over time, and the new Bharatiya Sakshya Adhiniyam, 2023, hereinafter referred to as the BSA, is one of those changes. BSA focuses primarily on the procedural aspect of the law, governing how rights may be enforced before a court of law.

It has replaced the existing colonial legislation, Indian Evidence Act, 1872 implying that it would have a prospective effect. Apart from the cosmetic changes in the layout, the BSA retains most of the provisions of the Indian Evidence Act, 1872 including those on confessions, relevancy of facts, and burden of proof. It retains the distinction between two kinds of evidence - documentary and oral.

Unlike the India Evidence Act, 1872, the BSA classifies electronic records as primary evidence. It expands such records to include information stored in semiconductor memory or any communication devices (smartphones, laptops) including records on emails, server logs, smartphones, locational evidence and voicemails. Traditionally oral evidence included statements made before Courts by witnesses concerning a fact under inquiry. However, in the light of technological advancements, the BSA allows oral evidence to be given electronically. This would permit witnesses, accused persons, and victims to testify through electronic means. It provides that electronic or digital records, that have been printed or stored in optical or magnetic media produced by a computer, will have the same legal effect as paper records. BSA expands secondary evidence to include oral and written admissions, and the testimony of a person who has examined the document and is skilled to examine the documents.

A joint trial refers to the trial of more than one person for the same offence. The states that in a joint trial, if a confession made by one of the accused which also affects the other accused is proven, it will be treated as a confession against both. The BSA adds an explanation to this provision that a trial of multiple persons, where an accused has absconded or has not responded to an arrest warrant, will be treated as a joint trial. This Act demonstrates a positive step towards addressing contemporary legal challenges, particularly those related to digital evidence. The government has attempted to ensure uniformity not only in the law but also in the procedure by which the law is applied in cases before any Court. However, regular reviews and updates will be essential to maintain its effectiveness in the face of technological and legal advancements.

Practical Insights to Modernise Criminal laws

The IPC's classification scheme, organizing offenses through a logic reflecting 19th-century criminality categories, proved inadequate for emerging crime patterns. ***Cybercrime, financial fraud schemes, organized crime syndicates, and technologically-enabled human trafficking*** constituted crime categories the IPC addressed only through awkward retrofitting into provisions designed for entirely different contexts. This legislative mismatch created investigative confusion, prosecutorial uncertainty regarding applicable penalties, and judicial discretion that generated inconsistent outcomes across jurisdictions. **The Standing Committee on Home Affairs explicitly documented these deficiencies, recommending comprehensive rather than incremental reform.**

This philosophical shift reflects contemporary criminological understanding that purely punitive approaches fail to reduce recidivism, perpetuate cycles of incarceration, and neglect victim restitution and offender reintegration. The introduction of ***community service*** *as a punishment* option exemplifies this philosophical reorientation. The BNS provides for community service in cases involving relatively minor offenses such as theft of property worth less than Rs. 5,000.

Use of contemporary terminology & Removing Archaic language: The treatment of mental illness in criminal responsibility represents both genuine modernization and problematic definitional choices that may generate perverse results. The statute replaces the IPC's reference to "unsound mind" with "mental illness," aligning the criminal law with contemporary psychiatric terminology defined through the Mental Healthcare Act 2017. This modernization theoretically enables more sophisticated judicial assessment of cognitive incapacity, drawing on clinical mental health standards rather than 19th-century moral philosophy.

Digital evidence to reflect digital-age crime patterns: The Bharatiya Sakshya Adhiniyam 2023 (BSA), replacing the Indian Evidence Act 1872, fundamentally recalibrated evidentiary standards to reflect digital-age crime patterns. The IEA's conceptual framework, developed when documentary evidence meant paper documents and "hearsay" referred to oral testimony, **treated electronic records** as inherently suspect *secondary evidence* requiring authentication through witnesses and technical certification. This created investigative and prosecutorial barriers precisely inverted in digital-age crime.

The BSA 2023 fundamentally reverses this presumption, defining electronic records as "any information generated or transmitted by any device or system capable of being stored or retrieved," encompassing emails, text messages, multimedia files, server logs, and location data as primary evidence. This modernization proves crucial for investigating cybercrime, as prosecutors no longer face evidentiary burdens requiring witness testimony authenticating digital communications. Instead, prosecutors may introduce properly preserved digital evidence with authentication establishing that the relevant device or system reliably generated or transmitted the information.

This **evidentiary modernization** enables investigation of contemporary crime categories incomprehensible within the IEA framework. Digital payment fraud, cryptocurrency theft, online harassment, deepfake-based extortion, and organized cybercrime networks all depend on digital

communications and transactions that constitute the *entire* evidentiary foundation for investigation and prosecution. The BSA 2023's recognition of electronic evidence as primary evidence, rather than requiring cumbersome authentication procedures, represents a necessary adaptation to technological reality that was wholly absent from colonial-era evidence law.

Mandatory forensic investigation: The Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 introduced **mandatory forensic investigation for "heinous crimes" i.e. offenses punishable by seven or more years imprisonment**. This provision addresses a critical investigative inadequacy: the IPC/CrPC framework permitted police investigative discretion regarding whether to conduct forensic examination, resulting in inconsistent evidence collection practices and frequent contamination or loss of physical evidence.

The mental illness definition simultaneously modernizes terminology while excluding mental retardation protections, creating perverse results requiring legislative correction. The sedition replacement, while removing the colonial provision explicitly, reconstitutes comparable restrictions through differently labelled provisions lacking the Supreme Court's interpretive limitations, creating potential for renewed suppression of legitimate political dissent. Critical gender justice recommendations from the Verma Committee remain unimplemented, and the absence of unified statutory architecture for contemporary organized crime networks particularly human trafficking-fuelled online fraud leaves significant gaps in investigative and prosecutorial frameworks.

Dr. AMAR KUMAR PANDEY IPS

The New Trinity of Criminal Laws — A Journey from Punishment to Justice

In the evolving landscape of India's legal system, the introduction of the new trinity of criminal laws stands as one of the most significant legislative milestones of the past century. These laws are not merely statutory reforms; they represent a profound shift in the philosophical and practical foundations of justice. Emerging at a time when society is undergoing rapid psychological and structural transformation, they aim to redefine the relationship between the individual, the State, and the concept of justice itself.

The backdrop against which these laws were conceived is complex and deeply reflective of contemporary realities. Modern society, shaped by accelerated communication and technological advancement, has witnessed an unprecedented transformation in human behavior and collective consciousness. Individuals and groups now think, react, and interact in ways that were previously unimaginable. This transformation, while progressive in many respects, has also given rise to distorted social anomalies—challenging the legal system to adapt and respond with precision and foresight. It is within this milieu that the new criminal laws were crafted, with the intent of equipping the justice system to confront these emerging challenges.

The year 2023 marked a watershed moment in the annals of India's criminal jurisprudence. The formal inauguration of these laws on 1st July 2024 symbolized not only a legislative transition but also a philosophical one. The shift was eloquently encapsulated in the idea of moving "from punishment to justice." This phrase, though seemingly simple, carries within it layers of meaning that demand deep engagement. Justice, in this renewed vision, is not merely punitive but restorative, not merely procedural but deeply human.

To truly understand this transformation, one must approach the law not as a mechanical instrument for enforcement but as a living embodiment of ethical and moral principles. The pursuit of justice requires more than professional competence—it demands a commitment to becoming a servant of justice rather than its master. Only through such immersion can one begin to grasp the subtle and intricate meanings embedded within the concepts of crime, punishment, and societal security.

Another significant dimension of this reform lies in the emphasis on building "trust in justice." This notion invites reflection on the historical relationship between the legal system and the people it serves. It raises pertinent questions about whether trust was previously absent or merely unperceived. In either case, the new laws seek to bridge this gap, fostering confidence through transparency, accountability, and responsiveness.

While these reforms represent a forward-looking vision, they are not an outright repudiation of the past. The contributions of earlier legal architects, particularly those responsible for the codification of laws during the colonial era, are acknowledged with due respect. The foundational codes, though products of their time, laid the groundwork for a structured legal system in a diverse and complex society. Their endurance over decades is a testament to their intellectual rigor and practical utility. Yet, the history of legal thought in India predates even these codifications. Ancient texts such as the Manusmriti and the Arthashastra attempted to articulate systems of governance, crime, and punishment. While these works hold historical significance, they lacked the universality and human-centric approach that modern legal systems strive to uphold. The evolution of law, therefore, can be seen as a gradual movement towards recognizing the intrinsic dignity and rights of the individual.

At the heart of this evolution lies a fundamental principle: the supremacy of law over all individuals and institutions. No matter how powerful a person or entity may be, the law remains the ultimate authority. This principle is most profoundly tested in matters involving life and liberty. The right to life, coupled with the right to be heard, forms the cornerstone of justice. Even when an individual stands accused of the gravest offences, they retain an inherent dignity and a right to fair adjudication. In such moments, the balance of power between the individual and the State must be carefully maintained, ensuring that justice is neither arbitrary nor oppressive.

The criminal justice system, in this context, emerges as the true measure of a State's strength and legitimacy. Contrary to conventional notions that equate power with military or economic might, it is the ability to administer justice fairly and effectively that defines a State's identity. Institutions such as the judiciary, the police, the prosecution, and correctional services collectively embody this power, functioning as custodians of law and order.

Among these institutions, the police occupy a particularly critical and complex role. Entrusted with the power of arrest—a power unparalleled in its immediacy and impact—they serve as

the first point of contact between the individual and the criminal justice system. This authority, however, is not absolute. It is circumscribed by a dense framework of legal safeguards and judicial oversight designed to prevent misuse. Over time, an extensive body of legislation and jurisprudence has evolved to regulate police conduct, reflecting a continuous effort to balance authority with accountability. The new criminal laws retain many of these safeguards while introducing certain modifications aimed at enhancing efficiency. For instance, changes in the provisions relating to custody and investigation reflect an attempt to address practical challenges faced by law enforcement agencies. However, such changes have not been without controversy. Critics from various quarters—including legal scholars, practitioners, and even members of the judiciary—have raised concerns about the potential for misuse and the implications for civil liberties.

Some have argued that these reforms risk tilting the balance in favor of the State, potentially leading to an overreach of authority. The specter of a "police state" has been invoked in certain critiques, underscoring the importance of vigilance and continuous evaluation. Historical experiences, both during the colonial period and in moments of constitutional crisis, serve as reminders of the consequences of unchecked power. At the same time, it is essential to recognize that dissent and debate are integral to the evolution of law. The multiplicity of perspectives surrounding these reforms reflects the vibrancy of democratic discourse. Rather than undermining the legitimacy of the laws, such engagement strengthens it by ensuring that the system remains responsive and adaptable.

Ultimately, the new trinity of criminal laws represents both continuity and change—a synthesis of historical legacy and contemporary necessity. Their true impact, however, will not be determined solely by their text but by their interpretation and implementation. It is in the hands of future legal professionals, scholars, and practitioners that these laws will find their meaning and direction.

As the next generation steps into the realm of law, they inherit not only a body of statutes but also a profound responsibility. The challenge before them is not merely to apply the law but to understand its spirit, to question its assumptions, and to strive for a system that is just, equitable, and humane. In doing so, they will contribute to an ongoing journey—one that seeks to transform justice from an abstract ideal into a lived reality.

Dr. MADHAVA SOMA SUNDARAM

Forensic Frontiers: The Convergence of Science, Technology, and Modern Criminal Justice

In the contemporary landscape of criminal justice, forensic science has emerged as a powerful ally, reshaping the manner in which investigations are conducted and evidence is presented before courts. No longer confined to conventional laboratory analysis, forensic methodologies today reflect a seamless integration of advanced technology, scientific precision, and behavioural insights. This evolution has profound implications, particularly for legal practitioners who must navigate and interpret such evidence with increasing sophistication.

At the core of this transformation lies the study of genetic material. Every individual carries distinct genetic markers—unique identifiers embedded within DNA. Through meticulous examination, these markers can reveal critical information about a person's ancestry, biological traits, and even certain phenotypic characteristics. The ability to derive such insights, often referred to as DNA phenotyping, marks a significant leap in forensic capabilities, allowing investigators to construct profiles that extend beyond mere identification.

Traditionally, however, the process of DNA analysis was both time-consuming and logistically demanding. Collected samples had to be dispatched to Central Forensic Science Laboratories, such as those in Hyderabad or other major centres across India. Upon arrival, these samples would enter a systematic queue, awaiting analysis alongside other forms of evidence—ranging from ballistic materials to tyre impressions and biological traces. Given the necessity for accuracy and multiple levels of verification, particularly in cases involving genetic evidence, the process could take several months before results were made available. While fingerprint analysis remained relatively swift due to its accessibility at the district level, most forensic examinations required centralized expertise. Even state-level facilities, such as those in Tamil Nadu, adhered to similar procedural rigor. The emphasis, understandably, was on ensuring that the evidence could withstand the scrutiny of judicial proceedings, where even minor inconsistencies could have significant consequences.

In stark contrast, the present era has witnessed a dramatic compression of time and space in forensic analysis. Portable DNA analysis devices—compact enough to resemble a briefcase—have revolutionized the investigative process. Forensic experts can now conduct on-site

examinations, extracting and analysing genetic material directly at the crime scene. Within a matter of hours, crucial information about an individual can be obtained, enabling investigators to build preliminary profiles even before the completion of initial inquiries. This immediacy not only accelerates investigations but also enhances their precision and direction.

Beyond DNA analysis, the documentation of crime scenes has undergone a remarkable transformation. Earlier methods relied heavily on forensic sketches, where investigators manually depicted the spatial arrangement of evidence, including the position of the body, weapons, and bloodstains. While these drawings served as valuable interpretative tools, they were inherently limited by human subjectivity. The advent of forensic photography introduced a greater degree of objectivity, allowing scenes to be captured from multiple angles with reference scales to indicate size and proportion. Yet, even this advancement pales in comparison to the capabilities of modern virtual reality (VR) technology. Today, highly sensitive VR cameras can generate comprehensive 360-degree reconstructions of crime scenes, capturing even the most minute details—such as microscopic blood spatter on walls.

These immersive digital models can be preserved indefinitely, enabling investigators, lawyers, and judges to revisit the scene long after the physical environment has changed. During trial preparation, such reconstructions offer an unprecedented level of clarity, bridging the gap between abstract evidence and tangible understanding.

Equally noteworthy is the integration of behavioural analysis into forensic investigations. By combining VR reconstructions with advanced imaging systems, investigators can observe a suspect's reactions in real time. Subtle facial movements—known as micro-expressions—often reveal involuntary emotional responses that may indicate recognition, stress, or deception. These cues, though minute, can provide valuable insights into the cognitive processes of an individual. The science behind this lies in the distinction between memory recall and fabrication. When recounting a genuine experience, the brain engages differently compared to when constructing a false narrative. Observable indicators—such as eye movement, facial tension, or habitual gestures—may signal these differences. Modern systems are now capable of capturing and analysing such responses, offering an additional layer of investigative inference.

However, it is essential to distinguish between investigative tools and admissible evidence. Techniques akin to truth serums or physiological monitoring, while potentially useful during

inquiry, are not recognized as evidence by the judiciary, particularly in light of constitutional safeguards. Their use, if at all, remains contingent upon voluntary consent and is confined to aiding investigation rather than determining guilt.

Further extending the boundaries of forensic science is the study of brain activity. Using electrode-based devices, investigators can monitor neural responses to specific stimuli, identifying patterns associated with logical reasoning or imaginative construction. Though still evolving, such techniques underscore the expanding interface between neuroscience and law enforcement.

Importantly, these advancements are not confined to theoretical discourse. Institutions such as the National Forensic Sciences University (NFSU) in India are at the forefront of implementing such technologies, working in collaboration with agencies like the National Investigation Agency (NIA) to address complex and high-stakes cases, including those involving terrorism.

In light of these developments, the role of a legal practitioner is undergoing a significant transformation. A lawyer today must not only possess a command over legal principles but also a functional understanding of forensic science. Whether representing the prosecution or the defence, the ability to interpret scientific evidence, question its validity, and present it effectively has become indispensable.

Encouragingly, the avenues for acquiring such knowledge have expanded considerably. From online courses and certification programmes to specialised academic modules, learning is no longer confined to traditional classroom settings. Modern pedagogical approaches, such as flipped classrooms, emphasize independent study complemented by interactive discussions, fostering deeper engagement with complex subjects.

Ultimately, the message is clear: forensic science is no longer an auxiliary discipline but a central pillar of modern legal practice. For aspiring and practicing lawyers alike, investing in this knowledge is not merely advantageous—it is essential. As the boundaries of science and law continue to converge, those equipped to navigate both realms will be best positioned to uphold justice in an increasingly complex world.

As the discourse concludes, the stage is set for further exploration, inviting experts and scholars to deepen the conversation and contribute to this dynamic and ever-evolving field.

Dr. NAGARATNA

Cyber Technology and Criminal Law: Evolving Challenges and Legal Responses

The rapid growth of cyber technology has significantly transformed the landscape of criminal law. With increasing dependence on digital platforms, crimes have also evolved in complexity and scope. This necessitates a corresponding evolution in legal frameworks. The introduction of new criminal laws in India marks an important step in addressing these emerging challenges, particularly at the intersection of cyber technology and criminal justice.

Early Legal Developments and the IT Act, 2000

The journey of integrating cyber technology into criminal law began with the enactment of the Information Technology Act, 2000. This legislation introduced key amendments to existing laws, including the recognition of electronic records and documents under criminal law. Similarly, the Indian Evidence Act was amended to include electronic evidence. These changes laid the foundation for addressing cyber-related offences within the traditional legal system.

However, India's legal response has often been reactive rather than proactive. Historical incidents, such as the Mathura rape case and the Nirbhaya incident, led to significant amendments in criminal law. Notably, the 2013 amendments introduced offences such as stalking, voyeurism, and sexual harassment, including their manifestation in cyberspace. Despite these developments, many provisions remained gender-specific rather than gender-neutral.

Gender Dimensions in Cybercrime Laws

Although the Bharatiya Nyaya Sanhita (BNS) claims to adopt a gender-neutral approach, a closer examination reveals that many offences, particularly those related to cybercrime against women, remain gender-specific. While the law allows for perpetrators of any gender in certain offences like stalking, the victim is still defined as a woman. This indicates a partial shift rather than a complete transformation toward gender neutrality.

Expanded Definitions and Cybercrime Regulation

One of the most significant contributions of the BNS is the expansion of legal definitions. For instance, the term "movable property" now includes intangible assets such as data and intellectual property. This broadening enables acts like data theft to be prosecuted not only under the IT Act but also under general criminal law provisions like theft.

Additionally, the BNS introduces comprehensive provisions addressing terrorism. The definition now includes acts carried out through any mode, thereby encompassing cyber terrorism, information warfare, and technology-driven threats such as drone attacks and artificial intelligence-based offences. The increasing relevance of information warfare—spreading misinformation or fake news to disrupt public order—has also been recognized within the legal framework.

Organized Crime and Cyber Offences

The new laws also incorporate provisions related to organized and petty organized crime. These provisions are particularly relevant in the context of cybercrime syndicates engaged in continuous or large-scale criminal activities such as financial frauds, hacking, and data breaches. Even smaller yet impactful crimes, such as examination paper leaks conducted through digital means, are now addressed under the category of petty organized crime.

Integration of Technology in Criminal Procedure

The Bharatiya Nagarik Suraksha Sanhita (BNSS) emphasizes the integration of technology into the criminal justice process. From the registration of First Information Reports (FIRs) through e-FIR systems to online trials, technology is being used to enhance transparency and accountability.

Procedural aspects such as recording witness statements, conducting searches, and collecting evidence increasingly rely on audio-video documentation, often through mobile devices. These measures aim to minimize malpractice, such as the planting of evidence, and ensure greater procedural integrity.

Furthermore, the law mandates the use of forensic science in investigations. Within a stipulated period, all states are required to equip themselves with the necessary infrastructure and

personnel, ensuring the presence of forensic experts at crime scenes. This reflects a shift toward scientific methods of investigation.

Inter-Agency Coordination and Digital Platforms

The integration of technology also extends to improving coordination among various components of the criminal justice system, including police, prosecution, and courts. Initiatives like the Integrated Criminal Justice System (ICJS) aim to create a unified platform for information sharing.

Additionally, digital tools and applications are being developed to streamline communication between stakeholders, including intermediaries such as social media platforms. Given that much of modern evidence exists in digital form, timely access to such data is crucial for effective investigation.

Regulation of Intermediaries and Online Content

Recognizing the role of digital platforms in both facilitating and evidencing crime, recent amendments to intermediary guidelines have imposed stricter obligations on service providers. Platforms are now required to remove illegal content within a significantly reduced timeframe—three hours in urgent cases—compared to the earlier limit of thirty-six hours.

Moreover, significant social media intermediaries must appoint compliance officers responsible for responding to legal requests. These measures have improved cooperation between platforms and law enforcement agencies, although challenges persist.

Challenges in Digital Evidence and Legal Gaps

Despite these advancements, certain issues remain unresolved. One major concern is the continued reliance on certification requirements for electronic evidence, commonly referred to as the 65B certificate. Obtaining such certification is often difficult, especially when evidence originates from foreign servers or accused individuals.

The Bharatiya Sakshya Adhiniyam has not only retained this requirement but has also introduced additional certification demands, creating further complications. Unlike countries such as the UK and Australia, which allow alternative methods to establish authenticity, the

Indian framework remains rigid. This has resulted in numerous cases failing due to procedural technicalities rather than substantive merits.

Balancing Technology, Privacy, and Rights

The increased use of technology in criminal investigations raises important questions about privacy and fundamental rights. The landmark judgment in Justice K.S. Puttaswamy v. Union of India established the right to privacy as a fundamental right under Article 21 of the Constitution.

This raises critical concerns regarding the extent to which law enforcement agencies can access electronic devices and personal data without judicial authorization. While existing procedural laws permit such access, the absence of robust safeguards may lead to constitutional challenges in the future.

Conclusion

The evolving interface between cyber technology and criminal law reflects both progress and complexity. While the new legal framework demonstrates a clear effort to modernize and adapt to technological advancements, several gaps and ambiguities remain. Issues related to digital evidence, privacy, and procedural safeguards require careful reconsideration.

Ultimately, the effectiveness of these reforms will depend on their practical implementation and judicial interpretation. As cyber technology continues to evolve, the law must remain dynamic, balancing the need for security with the protection of individual rights.

Dr. RANJITH OOMMEN ABRAHAM

Cyber Law in India: Emerging Challenges in the Digital Age

The rapid expansion of digital technology has fundamentally reshaped the nature of crime and the functioning of the legal system. As cyber activities increasingly dominate everyday life, the legal framework governing such activities faces significant challenges. While existing laws attempt to address cybercrime, several structural, procedural, and practical issues continue to hinder effective implementation.

Multiplicity of Laws: A Fragmented Legal Framework

One of the foremost challenges in cyber law is the absence of a single, comprehensive legislation. While the Information Technology Act provides a foundation, it does not cover all aspects of cybercrime. Instead, various offences are addressed through multiple laws, including traditional criminal statutes. This fragmented approach creates confusion and inconsistency. A unified legal framework could provide clarity, streamline enforcement, and ensure a more coherent understanding of cyber offences. The coexistence of multiple laws often results in overlap, gaps, and interpretational difficulties.

Blurring the Line Between Substantive and Procedural Law

Traditionally, the legal system distinguishes between substantive and procedural law. However, cyber law disrupts this distinction. The Information Technology Act incorporates elements of both, addressing offences while also outlining certain procedural aspects such as cognizance and punishment. At the same time, it relies on general criminal procedure laws for areas where it remains silent. This hybrid structure creates ambiguity, making it difficult for practitioners to determine the exact procedural framework applicable in cybercrime cases.

Jurisdictional Complexities in a Borderless World

Cybercrime transcends geographical boundaries, making jurisdiction one of the most pressing challenges. Offenders often operate from different countries, exploiting the limitations of national legal systems.

Bringing such offenders within the jurisdiction of Indian courts is a complex and often impractical task. High-profile cases involving economic offenders highlight the difficulty of extradition and prosecution across borders. Effective resolution of these issues requires robust international cooperation, possibly through global conventions or frameworks facilitated by organizations like the United Nations.

The Enforcement Gap: A Law That "Barks but Rarely Bites"

Despite widespread recognition of cybercrime, enforcement remains weak. Financial frauds involving cyber offences have resulted in massive losses, affecting individuals across all sections of society, particularly senior citizens. Although such incidents frequently make headlines, the rate of successful prosecution and punishment remains low. This gap between law and enforcement undermines public confidence and highlights the need for stronger investigative mechanisms and judicial effectiveness.

The Rise of Digital Crime and the Need for Specialized Expertise

With technological advancement, a significant proportion of crimes have shifted to the digital domain. It is estimated that a majority of future criminal cases will involve some form of digital evidence or cyber element.

This transformation demands a corresponding shift in legal education and practice. Future legal professionals must equip themselves with knowledge of cyber law, digital forensics, and technological tools. The traditional approach to criminal law is no longer sufficient in a digitally driven world.

Artificial Intelligence and Modern Policing

The integration of artificial intelligence (AI) into policing has introduced new possibilities. Technologies such as predictive policing, surveillance systems, and data mining enable law enforcement agencies to detect and prevent crimes more efficiently.

For instance, AI-powered systems can track stolen vehicles through interconnected surveillance networks, identifying their location within seconds. Similarly, drones and advanced analytics are being used for monitoring and investigation.

While these advancements enhance efficiency, they also raise significant legal and ethical concerns.

Evidentiary Challenges and Privacy Concerns

One of the major hurdles in cybercrime prosecution is the admissibility of digital evidence. Even when law enforcement agencies successfully collect evidence using advanced technologies, courts may reject it due to lack of proper certification or procedural compliance.

Additionally, privacy concerns pose a serious challenge. The recognition of the right to privacy as a fundamental right in the landmark judgment of Justice K.S. Puttaswamy v. Union of India has placed limitations on the use of digital evidence. Evidence obtained through surveillance or data collection may be deemed inadmissible if it violates privacy rights, except in cases involving national security. This creates a tension between effective investigation and constitutional safeguards.

Technology Within the Criminal Justice System

Technology is not only influencing crime but also transforming the criminal justice system itself. Artificial intelligence is increasingly being used in areas such as prison management, parole decisions, and correctional reforms. While these developments improve efficiency, they also raise questions about fairness, accountability, and transparency. The legal system must adapt to ensure that technological tools are used responsibly and ethically.

The Need for Legal Reform and Capacity Building

The Information Technology Act, enacted in 2000, has become outdated in the face of rapid technological advancements. There is a growing consensus on the need to replace it with a more comprehensive and contemporary legislation, such as the proposed Digital India Act.

Furthermore, the judiciary and legal professionals require specialized training to handle cybercrime cases effectively. Establishing dedicated cybercrime courts and enhancing expertise in digital forensics are essential steps toward strengthening the system.

Conclusion

Cyber law in India stands at a critical juncture. While technology has revolutionized both crime and law enforcement, the legal framework has struggled to keep pace. Challenges such as fragmented legislation, jurisdictional issues, evidentiary barriers, and privacy concerns continue to impede effective justice delivery.

Addressing these challenges requires a holistic approach involving legal reform, international cooperation, technological integration, and capacity building within the judiciary and law enforcement agencies. Only then can the legal system effectively respond to the demands of an increasingly digital society.

Dr. VIJAYA LAKSHMI

Challenges in Implementing the New Criminal Laws: A Critical Analysis

The introduction of India's new criminal law framework, particularly the Bharatiya Nyaya Sanhita (BNS) and the Bharatiya Nagarik Suraksha Sanhita (BNSS), marks a significant shift in the country's legal landscape. While these reforms aim to modernize criminal justice, they also raise several practical and theoretical challenges. A closer examination of select provisions reveals important ambiguities, gaps, and implementation concerns that demand attention.

Organized Crime under Section 111: Conceptual and Constitutional Issues

One of the most debated provisions under the BNS is Section 111, which deals with organized crime. The provision broadly categorizes organized crime into economic offences and continuing offences. However, a fundamental issue arises due to the absence of a clear definition of "economic offences" within the statute.

This lack of clarity contradicts the principle of legality, which mandates that no act can be considered a crime without a clear legal definition and prescribed punishment. Without precise definitions, law enforcement agencies and courts may struggle to interpret and apply the provision consistently.

Another significant concern is the retrospective application of this provision. The law appears to allow past offences—previously treated as ordinary crimes—to be reclassified as organized crimes, thereby attracting harsher punishments. Such retrospective enhancement of punishment raises serious constitutional concerns under Article 20(1), which prohibits ex post facto criminal laws.

Petty Organized Crime and Overlapping Provisions

The introduction of "petty organized crime" further complicates the legal framework. For instance, theft is already punishable under specific provisions of the BNS. Reintroducing similar acts under petty organized crime creates confusion for law enforcement agencies regarding classification, investigation, and charge framing.

This overlap may lead to inconsistent application of the law, making it difficult for investigators to determine whether a particular act should be prosecuted as simple theft or as part of organized criminal activity.

Section 103(2): Punishment for Group-Based Murder

Section 103(2) introduces enhanced punishment for murder committed by a group of five or more persons based on factors such as religion, community, gender, or language. While the intent appears to address targeted violence, the provision lacks a clear designation or nomenclature for the offence.

In criminal law, naming an offence is crucial for establishing its identity, elements, and scope. The absence of a defined label—such as "hate crime" or "genocide"—creates ambiguity regarding its interpretation, particularly in determining the required mental element (mens rea) and physical act (actus reus).

Section 69: Criminalization of False Promise

Section 69 addresses sexual intercourse based on false promises, such as promises of marriage, employment, or promotion. However, the provision raises concerns about the boundary between consensual relationships and criminal liability.

The lack of clarity regarding what constitutes a "false promise" may lead to misuse, particularly among younger individuals. There is a growing apprehension that such provisions, like certain existing laws, could be invoked in situations where consent was initially present but later disputed.

Snatching and Emerging Offences

The inclusion of offences like "snatching" under Section 304 reflects an attempt to address modern forms of street crime. However, the categorization and differentiation of such offences from existing provisions remain unclear, potentially leading to interpretational challenges.

Community Service as a Form of Punishment

One of the notable innovations in the BNS is the introduction of community service as a form of punishment. While this reform is progressive in theory, its practical implementation remains uncertain.

The law does not specify the nature, duration, or conditions of community service. Questions arise regarding whether such service will be remunerated, who will supervise it, and how compliance will be ensured. Without clear guidelines, the effectiveness of this alternative punishment remains doubtful.

BNSS Provisions: Procedural Ambiguities

The BNSS introduces several procedural changes, but not without ambiguity. Section 35(7) refers to exemptions from arrest for "persons of infirmity." However, the term "infirmity" is not defined, leaving law enforcement officers without clear criteria for its application.

Similarly, Section 43(3) permits the use of handcuffs in certain situations, despite longstanding concerns raised by human rights bodies regarding the practice. The continued allowance of handcuffing raises questions about the balance between security and human dignity.

Forensic Evidence and Practical Constraints

Section 176(3) mandates the involvement of forensic experts in cases involving serious offences punishable with more than seven years of imprisonment. While this reflects a move toward scientific investigation, it poses significant practical challenges.

India currently faces a shortage of forensic experts and infrastructure. Delays in forensic analysis are already a concern, and making their presence mandatory at crime scenes may further slow down investigations. Without adequate investment in resources, this provision may prove difficult to implement effectively.

Freedom of Expression and New Offences

The replacement of the sedition law with a new provision addressing acts that endanger the sovereignty, unity, and integrity of the nation introduces another area of concern. The inclusion

of electronic communication within its scope raises questions about its impact on the right to freedom of speech and expression under Article 19.

The broad wording of the provision may lead to potential misuse, particularly in regulating online speech and dissent.

Theoretical and Practical Gaps

From a theoretical perspective, many of the new provisions lack clarity regarding essential elements of crime, such as mens rea (guilty mind) and actus reus (guilty act). This creates uncertainty in legal interpretation and judicial application.

From a practical standpoint, law enforcement agencies may face difficulties in implementing these provisions due to overlapping offences, lack of infrastructure, and insufficient training.

Conclusion

The new criminal laws represent a significant attempt to reform India's legal system in response to evolving societal and technological challenges. However, the success of these reforms depends on their clarity, consistency, and practical feasibility.

The challenges identified—ranging from definitional ambiguities and constitutional concerns to infrastructural limitations—highlight the need for further refinement. These issues also open avenues for academic research, judicial interpretation, and policy development.

As the legal community engages with these new laws, it becomes essential to critically analyze and address these challenges to ensure that the objectives of justice, fairness, and efficiency are truly achieved.

Mr. Adv. KARTHIKEYAN

Bridging the Gap Between Law and Practice in Cybercrime Regulation

The rapid rise of cybercrime in India has exposed a significant disconnect between legal frameworks and their practical implementation. With over eighteen years of experience as a cybercrime lawyer, it becomes evident that the challenge is not merely the absence of laws, but the gap between those who draft them and those who enforce them.

The Disconnect Between Lawmakers and Law Enforcers

One of the most pressing issues in cybercrime regulation is the divide between legislators and implementers. Laws are framed by policymakers at the national level, often with broad theoretical considerations. However, their enforcement rests largely with police officers at the ground level.

This gap leads to practical difficulties in interpretation and execution. Whether under older laws like the Indian Penal Code and the Code of Criminal Procedure or the newer frameworks such as the Bharatiya Nyaya Sanhita (BNS), Bharatiya Sakshya Adhiniyam (BSA), and Bharatiya Nagarik Suraksha Sanhita (BNSS), the challenge of implementation remains largely unchanged.

The Problem with Electronic Evidence and Certification

A key example of this disconnect is the requirement of certification for electronic evidence, commonly associated with Section 65B of the Indian Evidence Act. Originally derived from outdated provisions of foreign law, this requirement was intended to assist judges—who may not be technically trained—in understanding digital evidence.

In theory, the certificate acts like a "manual" explaining the nature and authenticity of electronic records. However, in practice, it has created more obstacles than solutions. Courts have delivered conflicting judgments on whether such certification is mandatory, resulting in uncertainty and inconsistency.

Even under the new evidence law framework, similar requirements continue to exist. This has led to numerous cases failing, not because the evidence lacked merit, but because procedural

compliance was incomplete. The continued reliance on such outdated mechanisms highlights the need for reform.

Rethinking the Nature of Digital Evidence

Another conceptual issue lies in the classification of electronic evidence as primary or secondary. Unlike traditional evidence, digital data fundamentally exists in binary form—zeros and ones—and becomes human-readable only after processing.

This raises an important question: should digital evidence be treated using traditional evidentiary categories? Arguably, it should be recognized as a distinct form of evidence, requiring its own standards and principles rather than being forced into outdated legal classifications.

Jurisdictional Barriers in Cybercrime Cases

Cybercrime is inherently transnational, making jurisdiction a major challenge. Criminals often operate from foreign countries while targeting victims in India. This creates significant hurdles in investigation, prosecution, and recovery of losses.

In one instance, a victim of a large-scale investment fraud lost several crores of rupees. Although part of the amount was recovered, the remaining funds were traced to servers located abroad. Despite efforts involving authorities, the inability to enforce Indian law beyond national borders made recovery impossible.

Such cases illustrate the urgent need for international cooperation and coordinated legal frameworks. Without global agreements or collaborative enforcement mechanisms, cybercriminals will continue to exploit jurisdictional gaps.

Global Nature of Cybercrime Networks

Modern cybercrime operates through organized international networks. Fraudsters are often located in different regions, targeting specific populations. For example, certain regions have become hubs for particular types of scams, such as investment frauds, digital impersonation, and online extortion.

India, known for its high savings culture, has become a prime target. The scale of financial loss due to cybercrime runs into thousands of crores, highlighting the inadequacy of current enforcement mechanisms.

Limitations of the Existing Legal Framework

Despite the existence of the Information Technology Act, it is important to recognize that it was originally designed to regulate e-commerce rather than cybercrime. Only later amendments introduced provisions addressing cyber offences.

Even today, these provisions are limited in scope, and many cybercrimes are prosecuted under general criminal laws. This reinforces the need for a dedicated and comprehensive cybercrime legislation.

The proposed Digital India Act is expected to address these gaps, but its effectiveness will depend on how well it incorporates practical realities and enforcement challenges.

The Emerging Need for AI Regulation

As the world transitions beyond traditional cybercrime into the era of artificial intelligence, new legal challenges are emerging. AI technologies enable the creation of deepfakes, synthetic media, and cloned voices, which can be used for fraud, defamation, and misinformation.

Globally, jurisdictions such as the European Union have already introduced laws like the AI Act to regulate such technologies. India, being a major adopter of digital innovation, must also move toward establishing a comprehensive legal framework for artificial intelligence.

Recent Regulatory Developments: Intermediary Accountability

Recent regulatory changes in India have begun addressing some of these concerns. New rules place greater responsibility on intermediaries, such as social media platforms, and application developers.

These rules mandate that AI-generated content must be clearly labeled, and metadata identifying the creator must be captured. This ensures traceability and accountability in cases of misuse.

Importantly, these regulations also alter the concept of "safe harbor," which previously protected intermediaries from liability. Now, failure to comply with regulatory requirements can result in direct criminal liability for the platforms themselves.

From Individual to Platform Liability

Traditionally, liability in cybercrime cases was imposed primarily on individuals responsible for creating or sharing illegal content. However, the evolving regulatory framework shifts part of this responsibility to platforms and developers.

This marks a significant change in approach, recognizing that intermediaries play a crucial role in the dissemination of digital content. By holding them accountable, the law aims to create a more effective system of regulation.

Conclusion

The challenges in cybercrime regulation extend far beyond the existence of laws. They lie in the gaps between legislation and implementation, theory and practice, and national and international jurisdictions.

Addressing these challenges requires a multi-dimensional approach: reforming outdated legal provisions, creating specialized legislation, enhancing international cooperation, and adapting to emerging technologies like artificial intelligence.

Ultimately, the effectiveness of cybercrime law will depend not only on its design but also on its ability to respond to the dynamic and borderless nature of the digital world.

Dr. ANBARASI

Criminal Justice Through the Lens of Constitutional Morality

Good afternoon to all. Dr. Anbarasi, from the School of Excellence in Law, Tamil Nadu Dr. Ambedkar Law University, brings a unique perspective to the study of criminal justice—one rooted deeply in Constitutional Law and Human Rights. Her reflections emphasize a powerful idea: every law, no matter its nature, must ultimately align with the Constitution of India, the supreme law of the land.

At the outset, she draws inspiration from the ancient Greek philosopher Aristotle, often regarded as the father of logic and deductive reasoning. His timeless observation—"At his best, man is the noblest of all animals; separated from law and justice, he is the worst"—perfectly captures the essence of why legal systems exist. Law and justice are not merely institutional tools; they are the very framework that sustains a civilized society.

The Constitution as the Supreme Guiding Force

Dr. Anbarasi emphasizes that all laws must be interpreted in harmony with the Constitution of India. Any law that undermines constitutional principles loses its legitimacy. This perspective becomes particularly significant when examining the criminal justice system, which directly impacts individual rights and liberties.

Understanding criminal law through the lens of constitutional values ensures that justice is not only legally valid but also morally sound. It bridges the gap between rigid legal provisions and evolving societal values, ensuring that the law remains relevant and humane.

Doctrine of Constitutional Morality: A Contemporary Development

A key focus of her discussion is the doctrine of constitutional morality—a concept that has gained prominence in recent judicial interpretations. This doctrine represents a shift in legal thinking, where courts prioritize constitutional values over prevailing social or public morality.

The evolution of this doctrine can be seen in landmark judicial decisions such as the *Naz Foundation* case and the *Navtej Singh Johar* case. These cases revolved around the interpretation of Section 377 of the Indian Penal Code, which criminalized certain consensual

acts. While earlier interpretations upheld the provision based on societal norms, later judgments struck it down by invoking constitutional principles such as equality, freedom, and dignity under Articles 14, 19, and 21.

Through these judgments, the judiciary demonstrated that constitutional morality must prevail over social morality. This marked a significant step in aligning the criminal justice system with fundamental rights and international human rights standards.

Interconnection with International Human Rights

Dr. Anbarasi further highlights that constitutional interpretation does not exist in isolation. It often draws from international human rights instruments such as the Universal Declaration of Human Rights (UDHR) and covenants on civil, political, economic, social, and cultural rights.

By integrating these global principles, the Indian judiciary strengthens its commitment to protecting human dignity and ensuring justice in a broader, universal context. This approach enriches the criminal justice system, making it more inclusive and progressive.

Judicial Interpretation and Its Challenges

A significant challenge lies in interpreting constitutional morality itself. How should judges apply it? Should interpretation be purely literal, or should it involve logical and purposive reasoning?

Dr. Anbarasi points out that mere reliance on the literal meaning of legal provisions is insufficient. Judges must go beyond the text and consider the spirit of the Constitution. This requires courage, clarity, and a deep understanding of constitutional values.

She illustrates this with contrasting judicial decisions such as *P. Rathinam v. Union of India*, where the right to die was initially recognized as a fundamental right, and *Gian Kaur v. State of Punjab*, which later overruled this position. These cases demonstrate how constitutional interpretation evolves and how the judiciary plays a crucial role in shaping legal principles.

Role of the Judiciary and Future Legal Minds

Dr. Anbarasi calls upon the judiciary—and future members of the legal profession—to boldly apply the doctrine of constitutional morality. Judges must not hesitate to exercise their power of judicial review to ensure that laws align with constitutional principles.

For budding advocates and law students, she identifies a crucial research gap: the need to explore and define the contours of constitutional morality. Understanding how to interpret and apply this doctrine will be essential for the next generation of legal professionals.

Revisiting Theories of Punishment

From a jurisprudential perspective, she also connects constitutional morality with traditional theories of punishment—retributive, deterrent, and reformative. These theories must be revisited and interpreted in light of constitutional values to ensure that the criminal justice system serves not just as a mechanism of punishment, but as a tool for justice and reform.

Conclusion

In conclusion, Dr. Anbarasi underscores that the true essence of the criminal justice system lies in its alignment with the Constitution of India. The doctrine of constitutional morality serves as a guiding principle, ensuring that justice is not dictated by changing social norms but by enduring constitutional values.

As legal systems evolve, the responsibility rests on the judiciary and future legal professionals to interpret laws with wisdom, courage, and a commitment to justice. Only then can the criminal justice system truly fulfill its purpose—upholding the dignity, rights, and freedoms of every individual.

Bridging Law, Technology, and Constitutional Values: Contemporary Challenges in Criminal Justice

The evolving landscape of criminal justice today reflects a complex intersection of law, technology, and constitutional values. The insights shared by legal experts highlight not only the structural gaps within the system but also the urgent need for reform—both in legal frameworks and their interpretation.

At the core of this discussion lies a fundamental truth: law is meaningful only when it aligns with justice. As the ancient Greek philosopher Aristotle rightly observed, "At his best, man is the noblest of all animals; separated from law and justice, he is the worst." This timeless idea continues to resonate in modern legal systems, especially as societies confront new-age challenges such as cybercrime and artificial intelligence.

The Gap Between Law Making and Law Enforcement

One of the most pressing concerns in the criminal justice system is the disconnect between law makers and law implementers. Laws are framed by parliamentarians who deliberate on broad societal concerns, yet their enforcement lies primarily in the hands of police officers and investigators. This structural gap often leads to inefficiencies and misinterpretations in implementation.

Despite the introduction of new legislations such as the Bharatiya Nyaya Sanhita (BNS), Bharatiya Sakshya Adhiniyam (BSA), and Bharatiya Nagarik Suraksha Sanhita (BNSS), the foundational issues remain unchanged. Many of these laws continue to carry forward outdated concepts from colonial-era statutes like the Indian Penal Code (IPC), Criminal Procedure Code (CrPC), and the Indian Evidence Act.

A striking example is Section 65B of the Indian Evidence Act, introduced to address electronic evidence. Borrowed from the now-repealed UK Civil Act, this provision mandates a certificate to authenticate digital evidence. While originally intended to assist judges unfamiliar with technical details, its application in India has led to significant confusion. Courts have delivered contradictory judgments on whether the certificate is mandatory, resulting in the dismissal of cases due to procedural lapses rather than substantive justice.

Moreover, the classification of electronic evidence into "primary" and "secondary" forms reflects a misunderstanding of digital reality. Digital data, fundamentally composed of binary code, does not fit neatly into traditional evidentiary categories. This calls for a rethinking of legal language and concepts to better accommodate technological advancements.

Cybercrime and the Challenge of Jurisdiction

The rise of cybercrime has exposed the limitations of territorially bound legal systems. Crimes such as investment fraud, digital arrest scams, and cryptocurrency fraud often originate outside national borders, targeting victims within India.

In one instance, a victim lost a substantial amount in an international investment scam. Although a portion of the funds was recovered, the investigation revealed that the perpetrators operated from abroad. Even with significant influence and resources, legal enforcement could not extend beyond India's jurisdiction.

Such cases highlight the urgent need for international cooperation and a global legal framework to combat cybercrime. Criminal networks operate across countries like Cambodia, Laos, and Thailand, specifically targeting Indian citizens. Without multinational agreements and coordinated enforcement mechanisms, national laws alone remain insufficient.

Limitations of Existing Cyber Laws

Another critical issue is the absence of a comprehensive legal framework exclusively addressing cybercrime in India. The Information Technology Act, often considered the primary cyber law, was originally designed to regulate e-commerce, not criminal activity. Its provisions addressing cybercrime were introduced later through amendments, leaving significant gaps in coverage.

The need for a dedicated and robust cyber law is increasingly evident. Proposed legislations such as the Digital India Act may address some of these concerns, but their effectiveness will depend on practical implementation and adaptability to evolving technologies.

Artificial Intelligence and Emerging Legal Responsibilities

Beyond cybercrime, the rapid growth of artificial intelligence presents new legal challenges. AI-generated content, including deepfakes and cloned voices, has the potential to disrupt legal systems and societal trust.

Recent regulatory developments, such as the Information Technology Intermediary Guidelines and Digital Media Ethics Code Rules, 2026, aim to address these concerns. These rules place responsibility on intermediaries (such as social media platforms) and application developers to ensure transparency and accountability. They mandate the labeling of AI-generated content and the retention of metadata to identify creators.

Significantly, these rules shift liability from individuals to platforms in cases of non-compliance. This marks a departure from earlier provisions, such as Section 79 of the IT Act, which granted immunity to intermediaries. However, the effectiveness of these measures will depend on their enforcement in practice.

Constitutional Morality: The Guiding Principle

While technological and legal reforms are essential, the ultimate guiding force of the criminal justice system remains the Constitution of India. Every law must be interpreted in alignment with constitutional values, particularly fundamental rights.

The doctrine of constitutional morality has emerged as a crucial principle in this regard. It emphasizes that laws should be evaluated based on constitutional values rather than prevailing social or public morality.

This doctrine gained prominence in landmark cases such as *Naz Foundation* and *Navtej Singh Johar*, where Section 377 of the IPC was examined. The judiciary, interpreting Articles 14, 19, and 21, struck down the provision to the extent that it violated fundamental rights. These decisions demonstrated the judiciary's role in ensuring that justice is rooted in constitutional principles rather than societal prejudices.

Judicial Interpretation and Its Evolving Role

Judicial interpretation plays a pivotal role in shaping the criminal justice system. Courts must go beyond literal readings of the law and adopt a purposive approach that reflects the spirit of the Constitution.

Conflicting judgments, such as those in *P. Rathinam v. Union of India* and *Gian Kaur v. State of Punjab*, illustrate how legal interpretations evolve over time. These shifts underscore the importance of judicial courage and adaptability in addressing complex legal and ethical questions. For aspiring legal professionals, this presents an important area of research: understanding how constitutional morality should be interpreted and applied. It requires a balance between legal reasoning, ethical considerations, and societal needs.

Revisiting Theories of Punishment

Theories of punishment—retributive, deterrent, and reformative—must also be re-examined in light of constitutional values. A modern criminal justice system should not focus solely on punishment but also on rehabilitation and societal reintegration. Integrating these theories with constitutional principles ensures that justice is not only administered but also meaningful and humane.

Conclusion

The contemporary criminal justice system stands at a crossroads, shaped by rapid technological advancements and evolving constitutional interpretations. Addressing its challenges requires a multifaceted approach: bridging the gap between law making and enforcement, developing robust cyber laws, fostering international cooperation, and regulating emerging technologies like artificial intelligence. Above all, the Constitution of India must remain the guiding force. The doctrine of constitutional morality offers a framework to ensure that laws uphold fundamental rights and adapt to changing societal realities.

As the legal landscape continues to evolve, the responsibility lies with lawmakers, law enforcers, the judiciary, and future legal professionals to build a system that is not only effective but also just, inclusive, and forward-looking.

GALLERY

Prof. (Dr.) Sri Krishna Deva Rao, Vice-Chancellor of NALSAR University of Law, Hyderabad delivered the Inaugural Address.

Dr. Amar Kumar Pandey, IPS, Former DGP, Karnataka delivered the Special Address and donated 2 books authored by him to our library.

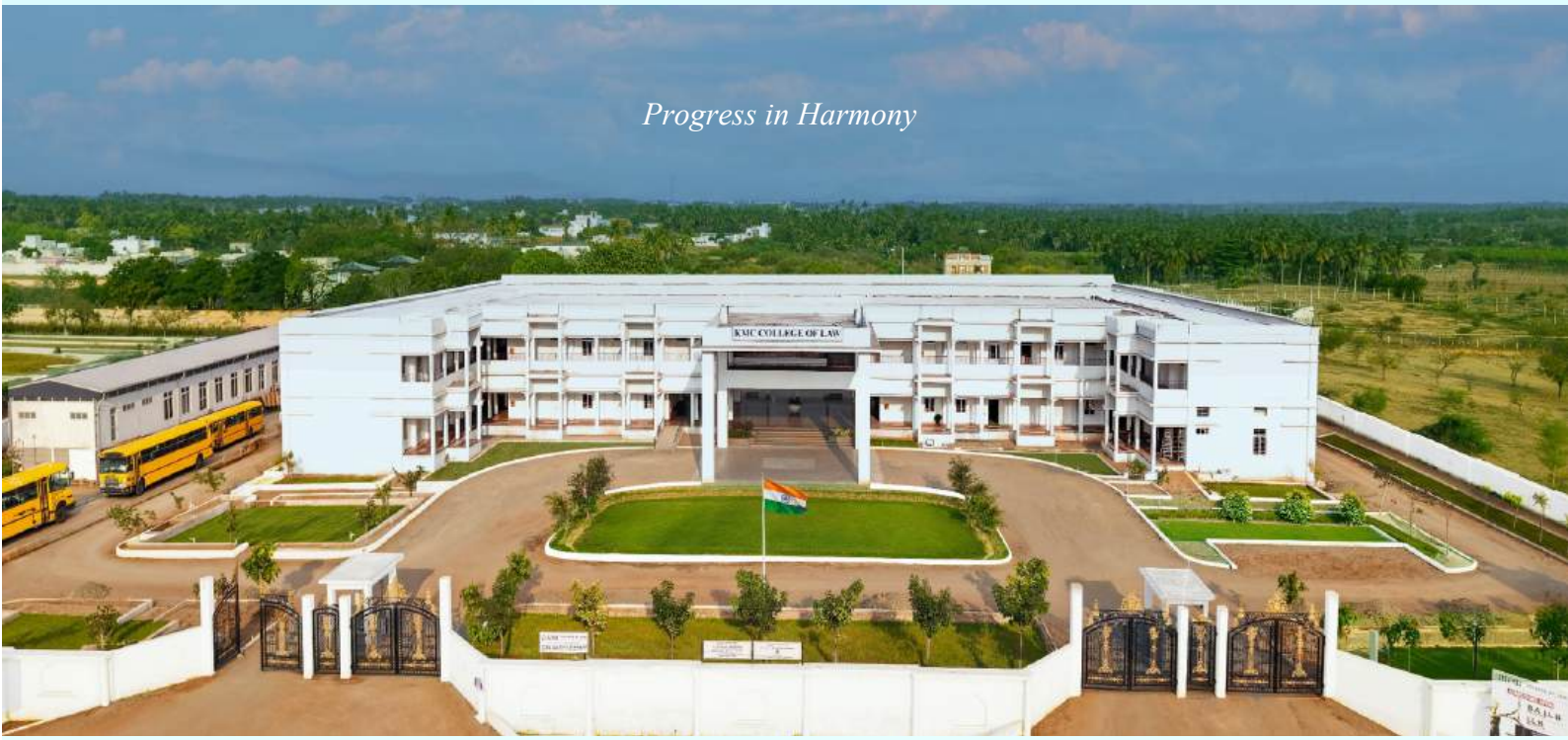
Paper Presenters at the National Seminar - Group Photograph

Panel Discussion with Resource Persons

The Best Paper Award was presented to Karthick S, Assistant Professor at Government Law College Madurai, along with a cash prize of ₹10,000.

The Second-Best Paper Award was conferred upon M. Charumathi of Chennai Dr. Ambedkar Government Law College Pattaraiperumbudur, who received ₹5,000.

Progress in Harmony



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