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# **DELVING INTO THE INTRICACIES OF LEGAL REFORM IN A SOCIETAL PERSPECTIVE: THE SHIFT TO BHARATIYA LAWS FROM BRITISH CRIMINAL LAWS**

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## **ABSTRACT**

*The drastic change in the relationship between society and the law was significantly defined by the change to the new Bhartiya laws.*

*This essay explores this exact significant shift from British colonial criminal laws to a Bharatiya (Indian) legal framework, in the light of a broader societal transformation and network. British laws that were imposed during colonial rule moulded India's legal landscape for over a century, leaving behind a vast network of legal structures, systems and practices. However, the dive toward Bharatiya laws represents a reclamation of indigenous legal principles, rooted in India's diverse cultural, philosophical, and historical traditions. India's rich history, fuelled by interactions of society and legal reforms, shows the effort that society has made. This transition is not merely legal, but also symbolic of decolonization and national identity formation. By analysing the societal implications of this shift, the essay highlights how legal reforms can address modern challenges while aligning more closely with India's socio-cultural context. The essay also delves into the complexities of such reforms, including balancing tradition with global legal standards, ensuring equity, and meeting the demands of a modern democratic society. Ultimately, this shift represents a significant moment in India's journey toward a legal system that better reflects its values, history, and aspirations.*

## **INTRODUCTION**

You may legislate against human nature, but human nature will always get the best of legislation” - James Lendall Basford (1845–1915).<sup>1</sup>

Criminal laws are the cornerstone to order and peace. While they do not directly influence relationships in society like civil or uncodified laws, they solve and prevent larger conflicts and

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<sup>1</sup> James Lendall Basford, Sparks from the Philosopher's Stone, 1882

protect rights that are essential for life. Its preventative form benefits society in a deeper and unrealised way and is done through reformative principles. Its claws are deep into society's functioning, and the importance of an effective set of criminal laws cannot be underplayed<sup>2</sup>.

To reap the most benefits of any code or system, it has to be moulded to fit into the society it is made for. From colonial times, India has evolved into a more modern society, but still is deeply rooted in its cultural practices and systems.<sup>3</sup> The constitution of India provides for amendments to facilitate evolutions like this and has always been majorly contributed by consensus and accommodation (Granville Austin). Other laws, such as criminal laws also allow this construction and have to be updated from systems that are majorly influenced by British laws to ones that focus on India and Indian society. The importance of this entanglement between society and law guides the making and application of the laws. We see that as society changes, the laws should follow in stream to create balanced systems.

### **SHIFT TO BNS**

In the larger scheme of things, we saw the change the Bharatiya Nyaya Sanhita reform and revive the existing criminal laws. The profound impact of this lies in the context that these changes were made. In India, the secular and heritage-based culture gives a lot of weight to society as opposed to the system in the west which builds an egalitarian and individual-based society. The Bharatiya laws were preceded by the Indian Penal Code, 1860, which drew its ideology from these Western concepts that did not completely fit in evolved modern India.

The IPC was the first code of criminal law that was drafted on the recommendations of the first Law Commission by Thomas Babington Macaulay, and at the time, it proved to be an inclusive and efficient code. It focused on uniformity and diversity, and it held in all cases, above everything, certainty (Thomas Babington Macaulay)<sup>4</sup>. But with time, we saw the certainty that was built vanish and be replaced with ambiguity. The principles Macaulay used did not work as well as before, creating gaps in the system, and thus the need for a more comprehensive, better-fitting code was seen.

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<sup>2</sup> Ananta Kumar Giri, Rule of Law and Indian Society, 2005

<https://www.juragentium.org/topics/rol/en/giri.htm>

<sup>3</sup> <https://testbook.com/question-answer/according-to-granville-austin-which-of-the-follow--5f59fd95121b31b7155cc3a2>

<sup>4</sup> David Skuy, Macaulay and Indian Penal Code, 1862: The myth of Inherent Superiority and Modernity of the English Legal System compared to India's Legal system in the Nineteenth Century, Vol.32, No.3 (1998)

As the former chairperson of the <sup>5</sup>Committee for Reforms in Criminal Laws, Prof. Srikrishna Deva Rao, who was tasked with reforming the existing criminal laws, said, “A hallmark of any civilised society lies in the maturity and the erudition of its Criminal Justice System.” This committee was set up, through the Ministry of Home Affairs, Government of India, at National Law University Delhi, after seeing the inefficiencies in the system and the vow to use a humanitarian and rights based approach. Just as we were talking about context, the committee, noticing the imbalance between laws in the context of society, reformed criminal laws to bring balance back. The committee worked to “modernise and reform the substantive criminal laws and to align them with constitutional morality and social aspirations”, and they do this through re-examining, developing, applying and reviewing principles and laws from the IPC, 1860.

Delving deeper into the intricacies and changes that were made to modernize the criminal laws, the most important would be the gravitation away from its colonial roots. As specified before, IPC, 1860 was made to fit a British colonial society and was not only applied in India, but it was also used in other British colonies as well. We see India slowly moving away from this shadow and establishing more authentic systems, and the shift to the new Bharitya laws is also an indicator of this. There are very small changes that make a very big impact. Firstly, the change in calendar usage; the British Calendar month or year has been changed to the Gregorian Calendar month or year in BNS. Secondly, the word “juryman” has been removed from the definitions, as India does not follow the same jury system as Britain. The word originally existed when India was a British colony, and since the jury system existed in Britain, it was included in our criminal code as well. But with recent transformations, we see that the jury system does not work as well in India due to jury bias created either internally or through the media. This was established in the landmark judgement of *K. M. Nanavati vs. State of Maharashtra*<sup>6</sup>. Lastly, other definitions that were in the definition part of the IPC but are not used in any other section were removed. These include words such as “queen”, “British India”, “servant of Government”, and “Government of India”. All these words are related to British rule and have no other relevance in the modern Indian context.

Now moving into reforms made in the context of society, we see them help to make things

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<sup>5</sup> <https://criminallawreforms.in>

<sup>6</sup> *K. M. Nanavati vs State Of Maharashtra* on 24 November, 1961  
1962 AIR 605, 1962 SCR SUPL. (1) 567

certain. The betterment of society is made through changing its rules, changing the governance and keeping in mind the nature of humankind. Taking into account all the important nuances that bring society together as well. One of the most noticed changes is the removal of **Section 124A of the IPC, 1860**<sup>7</sup>, which convicts people for sedition. The section can be called one of the most misused laws, and it has been held in the Supreme Court that it is a law that does not fit in with the current social atmosphere. During British colonisation, the law was introduced and was objected by several Indian nationalists such as Mahatma Gandhi. Gandhi, in 1922, called the law “designed to suppress the liberty of the citizen” in court. This reform has been in the works for years, and there has finally been a step in the direction toward a society-based reform process. In several cases like *Kedar Nath Vs State of Bihar (1962)*<sup>8</sup>, we see the Supreme court complete ignore the verbatim as mentioned in Section 124A and create its own precedent-based interpretation. This shows the value of keeping in line with society and the law. Another example of this is the reforms in sexual offences, as in Indian society, having its high population influenced by intricate webs of culture, it is necessary to deal with the sentiments and the case load. After *Joseph Shine v. Union of India, 2018*,<sup>9</sup> the Supreme Court decriminalised adultery because it did not align with current societal values and violated constitutional rights like **Article 14, 15 and 21**<sup>10</sup>. In a five-judge bench in *Navtej Singh Johar v. Union of India (2018)*<sup>11</sup>, **Section 377**<sup>12</sup>, which criminalised unnatural sexual offences, was deleted in BNS. Again, another reform was made due to the force of societal relationships. The last reform I want to talk about was pushed through by the growing westernisation and realisation in Indian society, the deletion of the offence of 'attempt to commit suicide'. We have seen minds open up to internal battles of mental health that people fight, and this led to a deeper understanding of the criminal offence of suicide and its eventual deletion in the new Bharatiya laws. Several other offences have also been removed from the new criminal laws driven by societal pressure.

Alongside this, there have also been many new offences that have been added to criminal laws. This brings a new light of certainty that clears the air for differences in society. Like how

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<sup>7</sup> Indian Penal Code 1860, Article 124A

<sup>8</sup> Kedar Nath Singh vs State of Bihar on 20 January, 1962  
1962 AIR 955

<sup>9</sup> Joseph Shine vs Union of India on 27 September, 2018  
AIR 2018 SUPREME COURT 4898, 2019 (3) SCC 39

<sup>10</sup> Constitution of India 1950, Art. 14,15 and 21

<sup>11</sup> Navtej Singh Johar vs Union of India Ministry of Law And ... on 6 September, 2018  
AIR 2018 SUPREME COURT 4321, AIR 2018 SC (CRI) 1169

<sup>12</sup> Bharatiya Nyaya Sanhita 2023, Section 377

**Section 304 of BNS**<sup>13</sup> was added, which defines snatching as a separate to theft. It defines and explains it in a way that is ideal in a procedural view and reduces unfair trials and convictions. This clarity was needed in societies functioning to clear out situations that are hard to place and convict under specific sections, interfering with the established systems.

Another addition is the creation of a separate offence for medical negligence. We saw the seriousness of enhancing health care standards, and this starts with regulating with more certainty. **Section 106 of BNS**<sup>14</sup> now penalises causing death by negligence and provides stricter terms for medical professionals. This directly helps raise standards of a very essential and important commodity. The last inclusion I want to consider is the inclusion of **Section 109 and Section 110**<sup>15</sup>, which criminalize organised crime and petty organised crime, respectively<sup>16</sup>. The offence was first introduced at a state level by the Maharashtra State Legislative when the assembly passed the **Maharashtra Control of Organised Crime Act (MCOCA), 1999**<sup>17</sup>. Then it was adopted with slight differences by various other states progressively, and for the first time, it was brought to a national level in BNS. The significance of its inclusion lies in the substance that offence has in its inter-state and even international ramifications. The offence was discussed because of growing concerns and feelings of insecurity in society, but the term "general feelings of insecurity" was held by the Parliamentary Standing Committee in pursuance of Rule 270 of the Rules of Procedure and Conduct of Business in the Council of States, to be very vague and not well defined. Other concerns related to defining and bringing certainty of scope also arise when it comes to the terms "mobile organized crime groups" and "criminal group or gang". Overall, the offence creates a sense of security in society, elevating harmony. All the newly included offences act to bridge gaps in society, facilitating the smooth functioning, so, looking from a societal perspective, we see the direct impact of reform in a clear context.

In Indian society, as we have already established, there are certain complicacies that are deeply rooted in culture, one such example is that of patriarchy. Several countries around the world

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<sup>13</sup> Bharatiya Nyaya Sanhita 2023, Section 304

<sup>14</sup> Bharatiya Nyaya Sanhita 2023, Section 106

<sup>15</sup> Bharatiya Nyaya Sanhita 2023, Section 109 and Section 110

<sup>16</sup> Devesh K. Pandey, Bharatiya Nyaya Sanhita has specific provisions on organised crime in a first for national laws

<https://www.thehindu.com/news/national/bharatiya-nyaya-sanhita-has-specific-provisions-on-organised-crime-in-a-first-for-national-laws/article67755898.ece>

<sup>17</sup> The Maharashtra Control of Organised Crime Act, 1999

have a matriarchal or a matrilineal society, but India has a patrilineal society, which is reflected acutely in our laws. For individuals in India, it is very hard to associate the concept of victim with a man; this can be seen in cases where either the perpetrator is a woman or a man. There was a severe and extensive lack of understanding, realisation and knowledge in different sects of society, but as the western influence and profound development in thinking rose, society moved towards a more gender equal and neutral society. The status quo that dictated that women cannot be inciters has slowly shifted through more and more cases coming up that prove this ideology wrong. We have seen judgments that lean towards gender neutrality, and alongside this, the gender-neutral laws in BNS, 2023<sup>18</sup>. The judiciary will be an active advocate and critic for gender neutrality and in judgments like *National Legal Services Authority v. Union of India (2014)*,<sup>19</sup> in which transgender rights are recognised. Society has started to become more open-minded, as in the case of homosexuality. While it is notable that a considerably small part of society has only accepted homosexuality in its full form, judgments in cases like Navtej Singh Johar case v. Union of India (2018), which decriminalised homosexuality shows the commitment of the judiciary to bring about change. The legislative, following in the judiciary's path, is also moving with the times. There are laws before BNS, 2023 that do reinforce the ideals of gender neutrality, such as the **POSCO Act, 2012**<sup>20</sup>, **Hindu Marriage Act of 1955**<sup>21</sup> and **The Transgender Persons (Protection of Rights) Act, 2019**<sup>22</sup>. **Article 39(a)**<sup>23</sup> of the Constitution also states that every citizen of India, regardless of gender or sex, has the right to adequate means of livelihood, showing how these ideals are enshrined in our Constitution. It is society that has warped perception.

Reforms in BNS, 2023, mainly focus on removing verbatim that tend to be biased toward one gender. This includes replacing words that align with gender neutral vocabulary, like “whoever” instead of “any man who” used in **Sections 354 B**<sup>24</sup> and **354C**<sup>25</sup> of IPC for offences such as criminal force and assault. **Section 141**<sup>26</sup> of the IPC, which deals with the importation

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<sup>18</sup> Samiksha Kanaujiya, Need for More Gender-Neutral Laws

<https://www.drishtijudiciary.com/blog/need-for-more-gender-neutral-laws#:~:text=The%20Navtej%20Singh%20Johar%20case,way%20for%20gender%2Dneutral%20laws>

<sup>19</sup> National Legal Ser. Auth vs Union of India & Ors, 2014

<sup>20</sup> The Protection of Children from Sexual Offences Act, 2012

<sup>21</sup> Hindu Marriage Act of 1955

<sup>22</sup> The Transgender Persons (Protection of Rights) Act, 2019

<sup>23</sup> Constitution of India 1950, Art. 39(a)

<sup>24</sup> Indian Penal Code 2023 , Section 354(B)

<sup>25</sup> Indian Penal Code 2023 , Section 354(C)

<sup>26</sup> Indian Penal Code 2023, Section 141

of a person from a foreign country, has also become gender neutral, including both boys and girls in its ambit. This was also done to **Section 366A**<sup>27</sup> of the IPC, dealing with sexual exploitation.

Many reforms also take into account the importance of just punishments alongside just convictions. In BNS, 2023 changes from the extent of punishment to the type of punishment indicate the significant role the punishment can play in balancing societal interests. There is a very fine line between excessive and below reasonable punishment, so while crafting sentences, lawmakers have to be hyperaware of how society reacts to the particular offence. A sentence too long is unfair to the offender, and while it can act as a powerful deterrent, it goes against constitutional values. On the other hand, a sentence too short will not have the reformative action that it seeks and will not be fair to the victims of the offence. The number of years of imprisonment for rash and negligent acts and for hit and run cases have been increased, reflecting its importance in society. **Section 117(3)**<sup>28</sup> of BNS, which added a new offence for grievous hurt which results in persistent vegetative state or in permanent disability, and held a very severe punishment of not less than ten years and up to imprisonment for life. The addition of community service as a punishment under BNS is another example of a change made towards the benefit of society. It was added to keep in check the overcrowding in prisons and was based on the reformative theory of punishment.

The Bharatiya Nyaya Sanhita (BNS), a comprehensive overhaul of the Indian Penal Code (IPC), represents a significant step towards aligning Indian criminal law with contemporary societal values and aspirations. This analysis will delve into the key reforms introduced in the BNS and their potential implications for Indian society.

## **CONCLUSION**

The BNS, 2023, has shown substantial strides towards gender neutrality in criminal laws. Bringing in ideals of the current societal milieu and trying to ensure equal protection under the law for all individuals, without looking through the coloured lens that distinguishes and separates genders and their capabilities.

It has also set out to eliminate colonial remnants from Indian criminal law. By removing

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<sup>27</sup> Indian Penal Code 2023, Section 366A

<sup>28</sup> Bharatiya Nyaya Sanhita 2023, Section 117(3)

outdated terms and provisions that were deeply rooted in British colonial rule, the reforms aim to establish a more authentic and local legal system and framework. The process of this decolonisation is an integral part and step towards building a sense of national identity and sovereignty, which could bring fragments of India together.

The evolving nature of crime is also considered and is shown in the inclusion of offences like organised crime.

Aligning with constitutional principles and social morals and values, the reforms aim to ensure that criminal justice is administered in a just manner that fits in with human rights principles. This includes provisions like the right to privacy, the right to be free from torture, and the right to rehabilitation.

The reforms in BNS, 2023, can impact Indian society in various ways, such as contributing to a more equitable criminal justice system, which aims at combating terrorism and organized crimes, and helping to create a safer and secure environment for society.

Through this, social progress can also be seen by promoting gender equality, social justice and human rights, contributing to the overall development and progress of the Indian society. It also simplifies and clarifies the law, which reduces ambiguity and promotes legal certainty, benefiting both the citizens and law enforcement agencies.

The success of BNS reforms depends mainly on the implementation and effective enforcement, which is important to monitor their impact and make necessary adjustments over time.

In conclusion, the Bharatiya Nyaya Sanhita, 2023, is a major significant step taken towards Indian criminal law by addressing the challenges and promoting human rights, along with aligning societal values. These reforms can make a positive impact on Indian society.

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