

# From Colonial Criminal Law to Swadeshi Bharatiya Nyaya Sanhita, 2023: Constitutional Challenges and Reform Opportunities

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## Abstract

**Background:** India's criminal justice system has historically developed around colonial legislation, particularly the Indian Penal Code of 1860. The Bharatiya Nyaya Sanhita, 2023 (BNS) seeks to restructure substantive criminal law in a contemporary constitutional framework.

**Objective:** This study examines whether the transition to the BNS constitutes substantive decolonization and evaluates its constitutional challenges and reform opportunities.

**Methods:** A doctrinal and policy-based approach was adopted using the Constitution of India, the Indian Penal Code 1860, the Bharatiya Nyaya Sanhita 2023, official government materials, parliamentary discussions, and scholarly literature.

**Results:** The BNS introduced significant reforms while retaining substantial legal continuity. The Key constitutional challenges include legal certainty, equality, personal liberty, proportionality, free expression, federal implementation, and protection against arbitrary State power.

**Conclusion:** The BNS represents an important legal transition rather than a complete rupture of the colonial past. Its constitutional legitimacy depends on rights-oriented interpretation, institutional capacity, judicial review, and continuous legislative evaluation.

**Keywords:** Bharatiya Nyaya Sanhita, criminal law reform, decolonisation, constitutionalism, criminal justice, India.

## 1. INTRODUCTION

### 1.1 Background and Context

Criminal law represents one of the most powerful expressions of state authority worldwide. Through criminal legislation, the state identifies prohibited conduct, authorizes investigations and prosecutions, and prescribes punishments. Consequently, changes in criminal law have direct implications for individual liberty, constitutional rights, public security, and the relationship between citizens and state institutions.

India's substantive criminal law was historically governed by the Indian Penal Code, 1860 (IPC). (Monga, 2024) The IPC was enacted during British colonial rule and remained the principal substantive criminal law for more than one-and-a-half centuries. Along with the Code of Criminal Procedure and the Indian Evidence Act, the IPC forms the foundation of India's modern criminal justice system.

The historical significance of the IPC is complex and multifaceted. It provided a comprehensive and influential codification of criminal law but was developed within the political and institutional context of

colonial rule. Consequently, debates regarding criminal law reform have increasingly raised questions concerning colonial legal inheritance, democratic legitimacy, constitutional values, modernization, and the need for a criminal justice system that is more responsive to contemporary Indian society.

The Bharatiya Nyaya Sanhita, 2023, represents a significant legislative development in this narrative. (-, 2024) The BNS was enacted as part of a broader replacement of the earlier criminal law framework, alongside the Bharatiya Nagarik Suraksha Sanhita, 2023, and the Bharatiya Sakshya Adhiniyam, 2023. These three laws came into effect in India on July 1, 2024.

The Government presented the reform process as part of a comprehensive review of colonial-era criminal legislation and emphasized a more citizen-centric criminal justice framework. Official materials describe reforms, including the streamlining of offences and penalties, the introduction of community service for certain offences, and a greater emphasis on offences involving women, children, organized crime, and terrorism.

However, legislative replacement does not automatically lead to substantive colonial decolonization. Changes in statutory titles, language, organization, or legislative structure may coexist with significant continuity in substantive offences, punishments, legal principles, and institutional power.

This raises the central question of the present study.

**Does the Bharatiya Nyaya Sanhita, 2023, represent a substantive constitutional and legal transformation or primarily a legislative restructuring of an inherited criminal law framework?**

### 1.2 Problem Statement

The transition from the Indian Penal Code of; 1860; to the Bharatiya Nyaya Sanhita of; 2023; presents an important opportunity for criminal justice reform.(T.Balakrishna, 2025) However, this transition also raises significant constitutional and legal questions.

First, the objective of replacing colonial criminal legislation raises the question of what constitutes genuine legal decolonization.(Diala, 2024)

Second, the continuity between previous criminal law provisions and the BNS raises questions regarding whether legislative reform has resulted in substantive transformation.(Trakhov & Beshukova, 2021)

Third, the expansion, reorganization, or reformulation of certain offences requires examination through constitutional principles relating to:

1. Equality before law;
2. Life and personal liberties
3. Due process and fairness
4. Freedom of speech and expression.
5. Proportionality;
6. Legal certainty; and
7. Protection against arbitrary state action.(Case et al., 2017)

Finally, the success of the BNS depends on its implementation by institutions operating within India's federal and constitutionally governed criminal justice system.

Therefore, this study examines the BNS as both a **legal reform and constitutional transformation project**.

### 1.3 Objectives of the Study

This study had the following objectives:

1. To examine the historical transition from colonial criminal law to the Bharatiya Nyaya Sanhita, 2023.
2. To analyze the extent of continuity and change between the IPC and the BNS.

3. To evaluate whether BNS represents substantive legal decolonization.
4. To identify the major constitutional challenges arising from the new framework.
5. To examine the reform opportunities created by the BNS.
6. To propose constitutional and policy safeguards for the future development of the Indian Criminal Justice System.

## 1.4 Research Questions

This study addresses the following questions:

1. What were the principal characteristics of the colonial criminal law framework in India?
2. What major legal reforms and structural changes have been introduced through the BNS?
3. To what extent does the BNS depart from the substantive framework of the IPC?
4. What constitutional challenges may arise during interpretation and implementation?
5. What reform opportunities can strengthen the democratic and rights-oriented character of Indian Criminal Law?

## 2. MATERIALS AND METHODS

### 2.1 Research Design

This study adopts a **doctrinal, comparative, and policy-analytical research design**.

This study did not fabricate the primary survey data. Instead, it analyses verifiable legislative and policy materials to evaluate the constitutional implications of the criminal law reform.

The research follows the analytical sequence.

**Historical Legal Framework → Legislative Reform → Comparative Analysis → Constitutional Evaluation → Policy Recommendations**

### 2.2 Sources of Data

Primary Sources

The primary legal sources include

1. The Constitution of India.
2. Indian Penal Code, 1860.
3. Bharatiya Nyaya Sanhita, 2023.
4. Official Ministry of Home Affairs materials were used.
5. Government notifications and implementation documents are also included.

The Ministry of Home Affairs provides the official texts of the BNS, BNSS, and BSA as part of the new criminal law framework. (*Requirements for Bodies Providing Audit and Certification of Information Security Management Systems*, 2023)

Secondary Sources

Secondary sources included:

1. Parliamentary materials
2. Academic legal literature
3. Criminal law scholarship
4. Policy reports;
5. Institutional publications; and
6. Legal commentaries.

The analysis also considered official information regarding the consultations and implementations. Government materials indicate that the broader criminal law review involved consultations with several

stakeholders and institutions.

### **2.3 Method of Analysis**

Four principal methods were used for the analysis.

#### **A. Historical Analysis**

This study examines the development of IPC within the context of colonial governance.

#### **B. Comparative Legal Analysis**

The IPC and BNS were compared with respect to:

1. Legislative structure;
2. Criminalisation;
3. Punishment;
4. Legal continuity;
5. New offences; and
6. Reform orientation.

#### **C. Constitutional Analysis**

The BNS is evaluated using constitutional principles, particularly Articles 14, 19, 20, and 21 of the Constitution of India.

#### **D. Policy Analysis**

This study evaluated implementation and reform opportunities using official institutional and policy materials.

## **3. RESULTS AND ANALYSIS**

### **3.1 Historical Result: From Colonial Codification to Constitutional Criminal Law**

The IPC was enacted in 1860; during British colonial rule. Its objective was to create a comprehensive and uniform system of criminal offences and punishments.

However, colonial criminal law operated within a political system that did not derive its legitimacy from the Indian population. Thus, criminal law serves both legal and governance functions in China.

After independence, India did not immediately replace the IPC with a new sexual violence law. Instead, the Constitution transformed the normative environment in which criminal law operates.

The IPC is subject to constitutional scrutiny.

Thus, the development of Indian criminal law after independence involved two parallel processes.

**Continuity of statutory law** and **transformation through constitutional interpretation.**

This distinction is important because decolonization does not necessarily require the complete rejection of all inherited legal provisions. However, the constitutional legitimacy of inherited laws depends on their consistency with democratic rights and constitutional values.

### **3.2 Legislative Result: The BNS as a Structural and Substantive Reform**

The BNS is part of a broader legislative restructuring of India's criminal justice framework.

Official government information states that the new criminal laws replaced the IPC, the Code of Criminal Procedure, 1973, and the Indian Evidence Act, 1872, and came into force on July 1, 2024.

The official policy objectives include a more accessible and citizen-centric legal framework and reforms designed to respond to contemporary criminal behavior.

Important reform areas include the following:

1. Reorganization of criminal provisions
2. Community service as a form of punishment for certain offences

3. Greater emphasis on crimes involving women and children.
4. Provisions addressing organized crime
5. Provisions concerning terrorist activities; and
6. Integration with broader technological reforms in criminal justice administration is also necessary.

### 3.3 Comparative Analysis: Continuity and Change

The comparative analysis demonstrates that the transition is characterized by both continuity and change.

**Table 1. Comparative Framework**

| Dimension             | Colonial-Era Framework                     | BNS Reform Framework                                               |
|-----------------------|--------------------------------------------|--------------------------------------------------------------------|
| Legislative identity  | IPC, 1860                                  | Bharatiya Nyaya Sanhita, 2023                                      |
| Historical context    | British colonial administration            | Constitutional democratic India                                    |
| Reform objective      | Codification and administrative uniformity | Contemporary restructuring and citizen-oriented justice            |
| Punishment            | Traditional penal framework                | Retains core punishments while introducing community service       |
| Crime priorities      | Traditional criminal categories            | Greater emphasis on women, children, organised crime and terrorism |
| Legal environment     | Colonial governance                        | Constitutionally limited democratic State                          |
| Institutional context | Colonial policing and administration       | Federal constitutional institutions                                |
| Technology            | Nineteenth-century legal environment       | Connected with contemporary digital criminal justice reforms       |

Therefore, BNS represents an important legislative change. However, transformation should not be automatically equated with complete substantive discontinuity.

A substantial criminal law system cannot be easily reconstructed without retaining its foundational principles. Concepts such as criminal intention, culpability, causation, general exceptions, criminal liability, and proportional punishment are part of broader legal traditions.

Therefore, the relevant question is not whether every earlier legal concept has disappeared. The more important question is whether the **normative orientation of criminal law has changed sufficiently to reflect constitutional democracy, human dignity, and contemporary justice requirements.**

### 3.4 Constitutional Challenge I: Legal Certainty

The principle of legal certainty requires that criminal offences and punishments be sufficiently clear to enable individuals to understand the legal consequences of their actions.

During the transition from IPC to BNS, legal professionals must interpret:

1. Renumbered provisions;
2. Reformulated language;
3. Newly introduced offences; and
4. The relationships between previous judicial precedents and new statutory provisions.

The National Crime Records Bureau has published comparative and corresponding section materials for the BNS and earlier legal provisions, illustrating the practical importance of transitional tools during implementation.

**Analytical Findings:** Legal reforms require accompanying interpretative infrastructure. Without accessible comparative materials, judicial guidance, and professional education, legislative restructuring may only temporarily reduce legal certainty.

### 3.5 Constitutional Challenge II: Liberty and Due Process

Article 21 of the Constitution protects the life and personal liberty of individuals.

Criminal law directly affects liberty because it authorizes the following:

1. Investigation;
2. Arrest;
3. Prosecution;
4. Trial; and
5. Punishment.

Therefore, the constitutional legitimacy of the BNS must depend not only on the wording of the offences but also on how the law is interpreted and applied within the broader justice framework.

**Analytical Findings:** A modern criminal code must be evaluated in terms of public security and individual liberty. Effective law enforcement cannot justify arbitrary or disproportionate restrictions on personal liberty.

### 3.6 Constitutional Challenge III: Proportionality of Punishment

Criminal punishment must maintain a rational relationship between:

1. The seriousness of the offence.
2. The degree of culpability.
3. Public protection; and
4. Constitutional principles of fairness.

The introduction of community service is significant because it provides an alternative penal response for specified offences and potentially expands the range of sanctions available in the criminal justice system. Official government materials identify community service as an important feature of the new Criminal Law Framework.

**Analytical Finding:** Future reforms should examine whether the punishment policy promotes deterrence, rehabilitation, proportionality, and social reintegration.

### 3.7 Constitutional Challenge IV: Freedom of Expression and State Security

Criminal law provisions relating to national security, public order, and activities affecting the State require particularly careful constitutional interpretation.

The challenge is to ensure that the legitimate protection of national security does not result in disproportionate restrictions on;

1. Political dissent;
2. Academic expression;
3. Journalistic activity; or
4. Peaceful democratic participation:

**Analytical Findings:** Security-related criminal provisions require a narrow, constitutionally disciplined interpretation and effective judicial review.

### 3.8 Constitutional Challenge V: Equality and Uniform Implementation

Article 14 requires equality before the law and equal protection of the law.

However, implementation capacity may differ between

1. States;
2. Urban and rural regions
3. Well-resourced and under-resourced institutions; and
4. Different categories of criminal justice stakeholders.

The Government has undertaken capacity-building and training activities across States and Union Territories. Official information reported in July 2026 stated that the States and Union Territories had adopted measures, including notifications, rules, digital applications, and stakeholder capacity building, while the Bureau of Police Research and Development trained 83,740 officers and stakeholders since 2024.

**Analytical Findings:** Uniform legislation does not guarantee uniformity of justice. Equality requires comparable institutional capacities.

## 4. DISCUSSION

### 4.1 Is the BNS a Complete Decolonisation of Criminal Law?

The evidence suggests that the BNS should not be described simply as any of the following:

**A complete rejection of colonial criminal law or a mere renaming of the IPC.**

Both positions oversimplified the legal transition.

The BNS represents a significant attempt to restructure India's criminal law and introduce reforms appropriate for contemporary conditions. However, continuity in criminal law concepts and structures remains inevitable and, in some cases, is legally necessary.

The more appropriate analytical conclusion is that BNS represents

**A transitional project of legislative decolonization operating within a constitutional system that requires substantive reform beyond symbolic replacement.**

Therefore, the success of this project should be measured by constitutional outcomes; rather than legislative symbolism alone.

### 4.2 From Colonial Authority to Constitutional Accountability

The most important transformation in Indian criminal law is not only the replacement of one statute with another.

The deeper transformation is the movement from

**Colonial authority and constitutional accountability.**

A criminal justice system consistent with constitutional democracy must ensure the following:

1. Fairness;
2. Transparency;
3. Equality;
4. Accountability;
5. Judicial independence;
6. Human dignity; and
7. Protection against arbitrary state power.

Therefore, the BNS should be interpreted within this constitutional framework.

### **4.3 Reform Opportunities**

The BNS creates several opportunities for the further development of criminal justice.

#### **A. Rights-Oriented Criminal Justice**

Future interpretations should prioritize constitutional protections and human dignity.

#### **B. Victim-Centred Justice**

Reform should improve:

1. Victim support;
2. Access to justice;
3. Witness protection; and
4. Institutional Responsiveness.

#### **C. Proportionate Punishment**

Community-based sanctions and alternatives to imprisonment may encourage a more proportionate approach to punishment than the current on.

#### **D. Technology and Justice**

Digital systems can improve the following:

1. Transparency;
2. Evidence management;
3. Case administration; and
4. Access to justice.

However, technology must remain subject to privacy and due-process safeguards.

#### **E. Continuous Legislative Review**

Criminal law should not remain unchanged for another century.

Periodic legislative reviews should be institutionalized.

## **5. POLICY RECOMMENDATIONS**

### **5.1 Establish a Constitutional Review Mechanism**

A specialized mechanism should periodically examine the constitutional operation of new criminal law provisions.

The review should consider the following:

1. Judicial interpretation
2. Constitutional litigation
3. Disproportionate impact
4. Implementation challenges; and
5. Human rights concerns.

### **5.2 Strengthen Legal Education**

Law schools, judicial academies, and professional institutions should develop specialized programs in the following areas:

1. BNS interpretation;
2. Constitutional Criminal Law
3. Comparative criminal justice; and
4. Digital criminal justice.

The BPR&D provides training modules and implementation resources related to new criminal laws, demonstrating the importance of building a structured capacity.

### **5.3 Develop Uniform Interpretative Resources**

Nationally accessible resources should include the following:

1. Comparative provision tables
2. Explanatory guides;
3. Judicial research materials
4. Training manuals; and
5. Frequently updated case law databases.

### **5.4 Monitor Equality in Implementation**

The implementation should be periodically assessed across States and Union Territories.

The evaluation indicators should include:

1. Training;
2. Human resources;
3. Technology;
4. Forensic capacity;
5. Case outcomes; and
6. Access to legal assistance is also a concern.

### **5.5 Institutionalise Empirical Criminal Justice Research**

Future criminal law reforms should be supported by empirical evidence.

Periodic studies should examine the following:

1. Arrest patterns;
2. Prosecution outcomes;
3. Conviction patterns;
4. Sentencing;
5. Victim experiences;
6. Public confidence; and
7. Institutional disparities.

## **6. CONCLUSION**

The Bharatiya Nyaya Sanhita, 2023, marks one of the most important transitions in the history of substantive criminal law in India. The replacement of the Indian Penal Code of 1860 has both symbolic and substantive significance in contemporary India.

The present analysis demonstrates that the BNS provides important opportunities for legal modernization, institutional reform, and the development of a more contemporary criminal justice system. However, legislative replacement does not guarantee complete decolonization.

The central challenge is to ensure that criminal law operates according to constitutional logic; rather than merely historical or institutional logic.

The long-term success of the BNS will therefore depend on the following:

1. Constitutionally consistent interpretation
2. Protection of individual liberty and human dignity
3. Proportionate criminal punishment
4. Judicial independence and review
5. Equal institutional capacity
6. Professional training;

7. Technological safeguards; and
8. Continuous empirical and legislative evaluations are required.

Therefore, the transition from the IPC to the BNS should not be understood as the end of criminal law reform but as the beginning of a continuing constitutional project.

A genuinely Swadeshi criminal justice system cannot be defined solely by Indian nomenclature or legislative change. Its legitimacy must ultimately arise from its ability to protect the constitutional rights, dignity, equality, and security of the Indian people.

## References

1. -, M. (2024). Shortcomings of the Bharatiya Nyaya Sanhita, 2023: An Analytical Perspective. *International Journal For Multidisciplinary Research*, 6(5). <https://doi.org/10.36948/ijfmr.2024.v06i05.28030>
2. Case, S., Johnson, P., Manlow, D., Smith, R., & Williams, K. (2017). 20. Criminal justice principles. In *Criminology*. Wiley-blackwell. <https://doi.org/10.1093/he/9780198736752.003.0020>
3. Diala, A. C. (2024). *The Case against Decolonization* (pp. 212–231). Routledge. <https://doi.org/10.4324/9781032683522-15>
4. Monga, G. (2024). A Study on Challenges Regarding Criminal law in India. *Journal of International Commercial Law and Technology*, 5(1), 43–47. <https://doi.org/10.61336/jiclt/24-01-01>
5. *Requirements for bodies providing audit and certification of information security management systems*. (2023). Bsi British Standards. <https://doi.org/10.3403/pdcenisoieacts27006>
6. T.Balakrishna, D. (2025). From IPC to BNS: Evaluating the Transition and Its Implications for Law Enforcement and Judiciary in India. *International Journal of Engineering Technology and Management Sciences*, V1(RDEMS-3), 51–67. <https://doi.org/10.46647/g8a4vc30>
7. Trakhov, A. I., & Beshukova, Z. M. (2021). Towards the stability of criminal law: deliberation on certain starting points. *Право и Политика*, 9, 154–165. <https://doi.org/10.7256/2454-0706.2021.9.36376>