

EVOLUTION OF CRIMINAL LAW: A COMPARATIVE STUDY OF IPC AND BNS

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Abstract

The justice delivery system of any nation is dependent on the criminal laws of that nation. It showcases a clear demarcation of criminal acts and labels the harmful acts of the society. The Indian Penal Code, of 1860 was the major legislation of criminal law, originating from the colonial values. IPC having the obsolete provisions, could not hold the test of time and did not address the contemporary issues faced by the modern India. The BNS proved to be the solution to the redundant criminal system followed by us even after so many years of the Independence. The BNS was enacted in 2023 and it strives to modernize our justice system by addressing the relevant social and legal issues faced by the citizens. This paper highlights the lacunae in the previous penal code and draws a comparison between IPC and BNS to understand the evolution of the criminal laws of India. The Bhartiya Nyaya Sanhita (BNS), enacted in 2023, aims to modernize criminal law by addressing the socio-political realities of present-day India. This paper critically examines the evolution of Indian criminal law by comparing the IPC and BNS. It highlights the historical context of the IPC, identifies shortcomings in its provisions, and evaluates whether the BNS adequately addresses those limitations. The study focuses on key areas such as sedition laws, gender neutrality, victim-centric approaches, procedural reforms, and provisions for emerging crimes like cybercrime. Through an analysis of relevant case laws and statutory provisions, the paper seeks to understand the implications of this legislative transition and offer recommendations for effective implementation of the BNS.

Keywords

Criminal laws, Evolution, Sedition, Gender-neutral, Victim-centric, Hate speech

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Introduction

The legal system of every state requires a robust criminal law to safeguard its societal order and to protect its subjects. For over a century, the Indian Penal Code, of 1860 (IPC) was the one of the major criminal law legislation, governing criminal offenses and their penalties. However, the reflection of colonialism and English Common Law could be seen evidently in the IPC. It was a product of its time hence, it does not tackle the issues such as crimes related to cyber, Security and mob lynching. IPC was amended multiple times to evolve with the changing societal norms and challenges but it could not effectively address these issues due to its core archaic structure. The Bhartiya Nyaya Sanhita (BNS) was an attempt by the Indian legislative to shift the paradigm of Indian criminal jurisprudence so that it is more in the line with our constitutional beliefs. The BNS aims to be more inclusive and cater to the victims to a greater extent. This research paper seeks to draw a comparative analysis of the provisions and functioning of IPC and BNS. It also throws light on the historical background of IPC while highlighting its gaps and the way forward with the solutions provided by the BNS of those lacunae. This paper, with the help of case laws, statutory provisions and socio-legal aspects, will delve on how the antiquated provisions of IPC are replaced by modernized provisions that focus on gender-neutral language and the contemporary outlook of sedition laws.

Historical Background

The origin of the Indian Penal Code (IPC)

The Indian Penal Code was drafted in the year 1837 and was enacted in 1860 by the initiation of Lord Macaulay, aiming to be the most comprehensive framework of criminal law, framed for addressing the diverse Indian society. The provisions of the IPC were rooted in morality and retributive justice and barring its colonial undertones, the legislation influenced many countries in drafting their penal codes, such as, Malaysia, Bangladesh and Pakistan.

It was claimed by the critics that even after certain amendments such as the addition of dowry death and other provisions aimed to protect women, the IPC was entrenched with obsolete colonial principles. It was also argued that certain provisions of IPC did not find backing in the modern times, for example sedition and unnatural offenses (as it stood prior to being partially repealed).

The need for the Bhartiya Nyaya Sanhita (BNS)

The IPC's colonial origins and inability to address contemporary challenges called for a reimagined criminal law framework. The following factors necessitated the introduction of the BNS. Due to the foundation of IPC being colonial ideals and it not being able to effectively tackle the contemporary issues, there was a need to incorporate BNS. Such factors are enlisted below:

1. **Obsolescent Language and Imperialistic Connotation:** Many sections of the IPC retained language that was outdated and disconnected from modern Indian realities. The BNS replaces such language with simplified and culturally relevant terms. The language of IPC did not reflect the Indian status quo and was archaic, therefore, BNS opted to be culturally and temporally relevant.
2. **Surfacing of New Age crimes:** Crimes like cyberstalking, mob lynching, and online hate speech were inadequately addressed in the IPC. The BNS incorporates explicit provisions to tackle these issues. BNS deals with crimes, namely, mob lynching, online hate speech and crimes related to cyber misuse as these were not dealt within the IPC.
3. **Victim-Centric Approach:** IPC was deterrent and retributive in its approach as it overlooked the rehabilitation aspect of the victims. However, the BNS focuses on speedy trials, victim compensation and the protection of witnesses.
4. **Inclusiveness in language with regard to gender:** While the IPC was criticized for its gendered language, particularly in sexual offenses, the BNS introduces gender-neutral definitions to align with evolving societal norms and constitutional values. The language used in IPC was gendered, specifically in concern with sexual offenses. But BNS has evolved along with the constitutional principles and societal conscience and thus uses gender-inclusive language.
5. **In coordination with Constitutional values:** The BNS seeks to align its provisions with the constitutional principles in order to eliminate the probability of contradiction, namely, Section 124A of IPC.

The transition from IPC to BNS

The BNS replaced IPC on 1 July, 2024 after being introduced in the Parliament in 2023. The BNS seeks to fill the gaps which were left behind by IPC while maintaining its essential fabric. BNS works towards modernizing the criminal law of the country, while also incorporating the synchronous socio-political actualities.

Distinction between the IPC and BNS

The BNS stands on the foundation laid down by the IPC but cures the lacunae left by it, in the light of contemporary social and legal issues. The critical differences are listed below:

1. Sedition Laws

1. **IPC (Section 124A):** IPC provided the offense of Sedition under Section 124A, which stood as penalizing the words, signs or visible representation,

if they result in invoking “disaffection” towards the State. The provision was vague in nature and was used in an arbitrary manner.

2. **BNS (Section 150):** Section 150 under the BNS has replaced the provision of sedition with a distinct provision, which protects the “sovereignty, unity and integrity of India. In order to protect the Fundamental right of freedom of speech under Article 19 (1) (a), the BNS presents a narrow scope, limiting to the security of the nation.

2. Gender Neutrality

1. **IPC:** Provisions such as Section 375 (rape) and Section 354 (outraging modesty) were gender-specific, providing protection primarily to women. IPC only took women under the garb of its protection, when concerned with offenses, such as rape (Section 375) and outraging the modesty (Section 354).
2. **BNS (Sections 63-69):** BNS has taken the approach of being gender neutral in connection with the provisions of sexual offenses and the protection from them. The language of the provisions reflects the intention of protecting all genders, women, men and transgender people.

3. Capital Punishment

1. **IPC:** Retained the death penalty for crimes such as murder (Section 302) and treason. IPC provided capital punishment for the offenses of murder and waging of war.
2. **BNS (Section 302):** BNS has incorporated the phrase “rarest of rare” cases, with reference to the death sentence, aligning itself with the judicial decisions. Human rights have evolved since the enactment of IPC, hence the BNS has adopted the evolved principle of human rights.

4. Mob Lynching and Hate Crimes

1. **IPC:** IPC did not address the issues of mob lynching and crimes rooted in hate.
2. **BNS (Section 101):** Due to the increased instances of mob lynching over the years, BNS explicitly addresses the offenses and approaches them strictly. The purpose behind the rigorousness of the provision lies behind the gravity of the situation.

5. Cybercrime

1. **IPC:** IPC tackled crimes related to cyber misuse in a restricted sense and relied on other Acts (The Information Act, 2000) to deal with it.
2. **BNS (Sections 354F, 153C):** To address the increasing abuse of technology, the BNS has included specific provisions to deal with defamation, hate speech on the digital platforms and cyberstalking.

6. Victim-Centric Reforms

1. **IPC:** IPC was not victim-centric in its approach and prioritized punishing the offenders.
2. **BNS:** BNS is modeled around rehabilitative justice and incorporates victim compensation and protection. It also includes witness protection and fast-track trials.

7. Procedural Reforms

1. **IPC:** IPC required burdensome procedures which proved to be cause of delay in the justice system.
2. **BNS:** BNS includes provisions for the admissibility of electronic evidences and some other procedural requirements. The changes with regard to electronic evidence are a testament to the undeniable impact of technology.

8. Decriminalization and Reformatory Approach

1. **IPC:** IPC penalized certain offenses such as adultery (Section 497) and homosexuality (Section 377) which were read down by judicial interpretation.
2. **BNS:** BNS does not include such redundant provisions and strives to reform the penal system along the lines of the current situation of the nation.

9. Enhanced Penalties for Specific Crimes

1. **IPC:** IPC took a moderate approach while dealing with the offenses related to organized crime and trafficking.
2. **BNS:** BNS adopts a stringent approach for above mentioned offenses.

Case Laws Highlighting the Transition

The decisions of the Supreme Court have been pointing out the deficiencies in the IPC, which have been cured by BNS. This highlights the evolution of the criminal justice system and the necessity of aligning it with the constitutional principles.

1. Sedition: Kedarnath Singh v. State of Bihar (1962)

1. **Facts and Judgment:** Intention under Section 124A was interpreted in this case as intention to incite violence or public disorder. While upholding the constitutionality of Section 124A, the Supreme Court explained that slight disapproval of the actions of the government or mere criticism cannot amount to Sedition.
2. **Relevance to BNS:** Following through with this decision, the BNS has adopted a narrower approach under Section 150. The new provision removes the ambiguity and scope of arbitrariness by restricting the acts to endanger sovereignty, unity and integrity.

2. Gender Neutrality: NALSA v. Union of India (2014)

1. **Facts and Judgment:** This landmark case has paved the way for the recognition of equal rights for the Transgender individuals and acknowledged their status as the “third gender”. This ensures their rights to equality and dignity under Article 14 of the Constitution of India.
2. **Relevance to BNS:** To effectively deal with this issue, the BNS has adopted gender-neutral language in its provisions related to sexual offences, so that protection of all genders can be secured.

3. Mob Lynching: Tehseen S. Poonawalla v. Union of India (2018)

1. **Facts and Judgment:** In this case, the Supreme Court directed the government to legislate on the issue of mob lynching and tackle it specifically. The Court also issued guidelines for the prevention and remedy of mob lynching.
2. **Relevance to BNS:** To rectify this situation, the BNS explicitly criminalizes the offense of mob lynching under section 101 and lays down rigorous punishment for the offense.

4. Cybercrime: Shreya Singhal v. Union of India (2015)

1. **Facts and Judgment:** In this landmark judgment of the Indian discourse around the fundamental right of freedom of speech, the Supreme Court struck down Section 66A of the Information Technology Act, 2000 on the ground that it was vague in nature. The provision was held to be unconstitutional by the Court and conflicting with the right of individuals to free speech.

5. Relevance to BNS

Keeping up with the needs and issues of the modern times, the BNS explicitly tackles the issues of sexual harassment of women and organized crimes in connection with cyber misuse under Sections 75, 77 and 111 etc. The BNS aims to balance between rights of individuals to freely express their thoughts and the prevention of cyber-crimes.

6. Victim Rights: Delhi Domestic Working Women’s Forum v. Union of India (1995)

1. **Facts and Judgment:** In this case, it was emphasized to adopt victim compensation, and psychological and legal aid support for victims of sexual offenses in our justice system.
2. **Relevance to BNS:** The BNS is focused on adopting enhanced support mechanisms which include victim compensation and fast-track trials.

7. Reformatory Justice: Bachan Singh v. State of Punjab (1980)

1. **Facts and Judgment:** The Supreme Court constricted the punishment of the death penalty to “rarest of rare” cases while upholding its constitutionality in this case. It was a way forward from retributive to reformatory justice.

2. **Relevance to BNS:** The BNS does not repeal the death sentence as a penalty but narrows down its scope. The scope of this punishment was restricted to adhere to the evolving Human Rights and thus adopting a reformatory approach.

Impact of BNS on Modern Criminal Jurisprudence

The Bhartiya Nyaya Sanhita is a significant step towards the evolution of the criminal law framework of India. It resolves the issues presented by the Indian Penal Code by aligning itself with the constitutional principles and contemporary socio-legal concerns of India.

As already discussed, the BNS addresses many aspects of existing societal circumstances that could not have been thought about prospectively. The advent of technology, emphasis on victims, nuanced parameters on the gender identity and evolution of human rights are the products of its time.

Acknowledging the increase in Cyber Security Offences, the BNS incorporates extensive measures for cyberstalking, online defamation and digital hate speech. These rules illustrate the increasing impact of technology on criminal conduct. The incorporation of clear punishments for mob lynching and hate speech recognizes their rising occurrence and detrimental impact on society.

The BNS has supplemented the offender centered approach with the victim-centric stance. It follows the principle that the criminal system should not only punish the offender but also cater to the victim. To ensure that justice has been established in real sense, it is important to realize the rights of the victims and provide them with protection during the trials, compensation and rehabilitation. The BNS also implements systems for expedited trials in situations of sexual offenses, mob lynching, and other grave crimes to guarantee prompt justice. BNS has adopted measures to safeguard witnesses and their identities, which upholds the tenets of fairness and justice.

The BNS employs gender-neutral terminology in its definitions of sexual offenses, guaranteeing protection for all individuals regardless of gender or sexual orientation. By acknowledging the rights of transgender individuals in instances of sexual violence, the BNS adheres to the principle of inclusivity established in the Constitution.

BNS retains the deterrent theory but also moves towards rehabilitative and reformatory justice. The BNS maintains capital punishment laws but restricts their application to the rarest of the rare circumstances, prioritizing reformatory justice over retributive justice. For minor offenses, the BNS allows for rehabilitation, indicating a transition towards restorative justice ideas.

Challenges in Implementation

Notwithstanding its advantages, the BNS encounters numerous challenges:

1. **Awareness and Training:** Successful implementation necessitates comprehensive training for law enforcement, prosecutors and the judiciary regarding the new requirements.
2. **Judicial Interpretation:** The efficacy of the BNS will hinge on the consistent and equitable interpretation of the judiciary to avert misuse or overreach.
3. **Balancing Rights and Security:** Specific provisions, including those substituting sedition may undergo examination for their potential to restrict individual liberties.

Conclusion

The Bhartiya Nyaya Sanhita (BNS) signifies a crucial advancement in the progression of India's criminal law. The BNS represents a progressive transition towards a more inclusive, victim-centric and responsive legal framework by addressing the shortcomings of the Indian Penal Code (IPC) and implementing reforms that correspond with contemporary socio-political circumstances.

The BNS updates criminal jurisprudence by integrating provisions for developing offenses such as cybercrimes and mob lynching, utilizing gender-neutral terminology, and prioritizing victim rights and procedural efficiency. Its emphasis on reconciling personal liberties with national security demonstrates a congruence with constitutional tenets and the progressive demands of Indian society. The Act exhibits adaptation by abolishing outdated colonial clauses, prioritizing restorative justice and constraining the application of severe penalties such as capital sentences. The efficacy of the BNS will be contingent upon its execution. Extensive training for law enforcement Agencies the judiciary, public awareness initiatives and periodic legislative evaluations will be essential for its success. Moreover, judicial interpretation of essential sections will be pivotal in guaranteeing that the BNS fulfills its aims without violating basic rights.

In conclusion, the BNS represents a substantial advancement in the progression of India's criminal justice system. Despite existing problems, its implementation establishes a legal framework that is both resilient and effective, while also embodying India's constitutional principles and societal ambitions.

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