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**A COMPARATIVE STUDY: OLD AND NEW SUBSTANTIVE
CRIMINAL LAW**

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ABSTRACT

This research paper conducts a comparative study of the Bharatiya Nyaya Sanhita, 2023 and the Indian Penal Code 1860, aiming to analyse the legal frameworks governing criminal justice in India. The study examines these two codes' key provisions, similarities, and differences, highlighting their respective roles in the criminal justice system.

Employing a doctrinal research methodology, this study delves into the core principles, definitions, and classifications of offences outlined in the Bharatiya Nyaya Sanhita 2023 and the Indian Penal Code 1860. It explores the substantive aspects of criminal law covered by the Indian Penal Code, encompassing crimes against individuals, property, public order, and the state. To support arguments and come to a conclusion, the authors have reviewed a wide range of previously published material, including statutes, case laws, and newsworthy events.

The findings of this study contribute to a comprehensive understanding of the strengths, weaknesses, and interplay between the Bharatiya Nyaya Sanhita 2023 and the Indian Penal Code 1860. It identifies areas of convergence, discrepancies, and potential conflicts between these codes, shedding light on their implications for the Indian criminal justice system. The analysis also examines the coherence and effectiveness of these legal frameworks in ensuring justice, fairness, and the protection of individual rights.

By offering insights into the comparative study of the Bharatiya Nyaya Sanhita 2023 and the Indian Penal Code 1860, this research paper provides valuable knowledge for legal scholars, policymakers, practitioners, and stakeholders in criminal justice administration. It is a

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foundation for further discussions on legal reforms, harmonisation, and pursuing an equitable and efficient criminal justice system in India.

Keywords: Bharatiya Nyaya Sanhita, Indian Penal Code, criminal justice system, legal frameworks, substantive law.

INTRODUCTION

The new Bharatiya Nyaya Sanhita Bill, 2023, was passed by parliament in the later winter session of 2023, and it received the permission of the President on 25th December 2023 to convert it into law. Yet, it has not been enforced as the training sessions are ongoing to implement the same. The Bharatiya Nyaya Sanhita, 2023, is considered to continue the provisions of the Indian Penal Code, 1860, with some new additions, alterations, modifications and deletions. Moreover, Bharatiya Nagrik Suraksha Sanhita, 2023 and Bharatiya Sakshya Adhinyam, 2023, will also replace the existing Criminal Procedure Code, 1973 and Indian Evidence Act, 1872, respectively.

The Bharatiya Nyaya Sanhita, 2023, comprises XX Chapters and 358 sections. Changes have been made in the new Sanhita to consolidate all the 511 sections of IPC, 1860, with some modifications, additions, and deletions. Bharatiya Nyaya Sanhita, 2023 has introduced new words in the definition section, such as child, court, transgender, state government, etc. In addition, provisions such as organised crime, terrorist acts, snatching, and petty organised crime have been introduced in the new Bharatiya Nyaya Sanhita, 2023. Furthermore, modifications have been made to the punishments in terms of both fines and penalties. A new kind of punishment in the form of community service has been introduced.

RESEARCH OBJECTIVES

The objective of this research paper is to conduct a comparative study of the Bharatiya Nyaya Sanhita 2023 and the Indian Penal Code 1860, with the following specific aims:

1. To highlight changes in the new Bharatiya Nyaya Sanhita 2023 and the Indian Penal Code 1860, considering their respective contexts, including colonial influences, subsequent amendments, and judicial interpretations.
2. To examine the key provisions of the Bharatiya Nyaya Sanhita 2023 and the Indian Penal Code 1860, focusing on substantive aspects of criminal law, including definitions of offences, categories of crimes, and penalties.

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3. To identify and assess the similarities and differences between the Bharatiya Nyaya Sanhita 2023 and the Indian Penal Code 1860, considering their structure, principles, and legal concepts.
4. To identify areas of potential conflict, overlap, or gaps between the Bharatiya Nyaya Sanhita 2023 and the Indian Penal Code 1860 and provide recommendations for harmonisation, legal reforms, or amendments to enhance the efficiency, fairness, and effectiveness of the criminal justice system in India.
5. To contribute to the existing body of knowledge on criminal law in India by providing a comprehensive analysis of the interplay and implications of the Bharatiya Nyaya Sanhita 2023 and the Indian Penal Code 1860, offering insights for legal scholars, policymakers, practitioners, and stakeholders involved in criminal justice administration.

RESEARCH METHODOLOGY

This research paper uses a doctrinal method to collect secondary data. Secondary resources used in this research paper include bare acts, law journals, books, published research papers, websites, etc. To support arguments and conclude, the authors have reviewed various previously published material, including statutes, case laws, and newsworthy events.

CH-I PRELIMINARY

A. Definitions

Relevant Section in Bharatiya Nyaya Sanhita,2023	Relevant Section in Indian Penal Code,1860
Section 2	Section 6 -52A

General explanations which were provided under **Chapter II (s.6- s.52A) of the Indian Penal Code, 1860 (“IPC”)** have now been brought under **Chapter I (Sec.2) of The Bharatiya Nyaya Sanhita,2023 (“BNS”)**. As compared to IPC,1860 definitions of Servant of Government (sec.14), India (sec.18), Electronic Record (sec.29A), Section (sec.50) have been deleted under BNS,2023.

Changes in regards to general explanations of IPC,1860 and definitions provided under sec.2 of BNS,2023:

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1. The definition of the word child has been inserted under.2(3)as:
“Child” means any person below the age of eighteen years.”³
2. The word “Court of Justice” has been replaced by the word “Court” under sec.2(5) of BNS,2023.
3. Definition of “Gender” under sec.2(10) BNS,2023 includes “Transgender”, which has been further explained as
“Explanation. — “Transgender” shall have the meaning assigned to it in clause (k) of section 2 of the Transgender Persons (Protection of Rights) Act, 2019”⁴
4. Definition of “Government” under sec.2(12) includes “State Government”
5. The meaning of “Judge” has received slight changes where the word “every person” has been removed under sec.2(16) of BNS,2023.
IN the case of *Surendra Kumar Bhatia v. Kanhaiya Lal and Ors.*⁵ Honourable Supreme Court held that the Collector is not a judge while discharging any duties under the Land Acquisition Act,1897.
6. The meaning of “movable property” has widened under s.2(21); now, it includes “property of every description”.
7. Changes have been made under sec.2(24) of BNS,2023, for the chapters and sections provided under sub-clause (a) and (b) under the meaning of the word “offence”.
8. The word “Every juryman” has been removed from sec.2(28) sub-clause (d) of BNS,2023.
9. BNS,2023 now includes sec.2(39), which provides that words and expressions used in BNS,2023 which are not explained in BNS,2023 and have been said in Information Technology Act,2000 or Bharatiya Nagarik Suraksha Sanhita, 2023 then they shall bear the same meaning as provided under the act or Sanhita.

“Words and expressions used but not defined in this Sanhita but defined in the Information Technology Act, 2000 and the Bharatiya Nagarik Suraksha Sanhita, 2023 shall have the meanings respectively assigned to them in that Act and Sanhita.”⁶

³The Bharatiya Nyaya Sanhita, 2023 (Act 45 of 2023), s.2(3).

⁴ The Bharatiya Nyaya Sanhita, 2023 (Act 45 of 2023), s.2(10).

⁵ AIR 2009 SC 1961

⁶ The Bharatiya Nyaya Sanhita, 2023 (Act 45 of 2023), s.2(39).

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B. General Explanations

Relevant Section in Bharatiya Nyaya Sanhita,2023	Relevant Section in Indian Penal Code,1860
Section 3	Section 6,7,27,32,34-38.

Section 3 has received slight changes:the word “Wife” has been replaced by the word “Spouse” under sec.3(3) of BNS,2023.“Code” has been replaced by the word “Sanhita.”

In the case of *Sewa Ram v. State of U.P.*, it was held by the apex court that section 34 IPC,1860 does not create any substantive offence under the act, but it binds all the wrongdoers under the evidence rule.

CH-II PUNISHMENTS

A. Punishments

Relevant Section in Bharatiya Nyaya Sanhita,2023	Relevant Section in Indian Penal Code,1860
Section 4	Section 53

Under sec.Four sub-clause (f) of BNS,2023, a new kind of punishment has been added: "Community service". The word community service has not been defined under the BNS,2023. In general, community service is referred to as:

“Unpaid work performed by a person or group of people for the benefit and betterment of their community without any form of compensation⁷.”

In the case of *Phool Kumari v. Office of the Superintendent Central Jail, Tihar, New Delhi and Ors.* The Hon’ble Supreme Court held that when a person is sentenced to simple imprisonment, a person has the choice to either he may work or not, but when a person is sentenced to rigorous imprisonment, then the person has no choice. He must undergo hard labour work.

⁷Community Service, India, available at : https://en.wikipedia.org/wiki/Community_service#:~:text=Community%20service%20is%20unpaid%20work,basis%20and%20may%20be%20compulsory (last visited on February 21, 2024).

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B. Fractions and Terms of Punishment

Relevant Section in Bharatiya Nyaya Sanhita,2023	Relevant Section in Indian Penal Code,1860
Section 6	Section 57

Under sec.6 of BNS,2023, at the end, “unless otherwise provided” has been added, which means that the method for calculating fractions and terms of punishment provided under s.6 BNS,2023, can be used only if any other method is not offered for calculating fractions and terms of punishment.

“In calculating fractions of terms of punishment, imprisonment for life shall be reckoned as equivalent to imprisonment for twenty years unless otherwise provided.”⁸

C. Amount of Fine, Liability, in Default,etc.

Relevant Section in Bharatiya Nyaya Sanhita,2023	Relevant Section in Indian Penal Code,1860
Section 8	Section 63-70

Under s.8(4) BNS,2023, imprisonment in case of making a default for community service has been added. Under s.8(5) BNS,2023, changes have been made regarding the terms of imprisonment and the acceptable amount when the offence is punishable with a fine or community service. A few modifications have been made to the sufficient amount provided within the illustrations in clause (b) of s.8(6) BNS,2023.

CH-III General Exceptions

A. When the right of private defence of property extends to causing death ⁹

Relevant Section in Bharatiya Nyaya Sanhita,2023	Relevant Section in Indian Penal Code,1860
Section 41	Section 103

⁸ The Bharatiya Nyaya Sanhita, 2023 (Act 45 of 2023), s.6.

⁹The Bharatiya Nyaya Sanhita,2023 (Act 45 of 2023), s.41.

A few modifications have been made under clause (b) and (c) of s.41 BNS,2023. Under clause (b), the phrase “by night” has been replaced by the word “after sunset and before sunrise.” This helps in specifying what “by night” means in case the death of a person is covered under the right to private defence for private property. Under clause (c), “mischief by explosive substance” has been added.

CH-IV Abetment

A. Abetment in India of offences outside India

Relevant Section in Bharatiya Nyaya Sanhita,2023	Relevant Section in Indian Penal Code,1860
Section 47	Section 108A

A slight modification has been made in the illustration provided under s.47 BNS,2023. Goa is part of India, considering that the legislature has removed the country “Goa” from the illustration and replaced it with the word “X country.”

B. Abetment outside India for offences in India

Relevant Section in Bharatiya Nyaya Sanhita,2023	Relevant Section in Indian Penal Code,1860
Section 48	.*

A new provision, s.47, has been added under the statute of BNS,2023, for “Abetment outside India for offences in India”. If a person aids or abets in the commission of any conduct outside India that would be illegal if carried out in India, he is complicit in the offence.

Section 47 BNS,2023 reads as follows:

“A person abets an offence within the meaning of this Sanhita who, without and beyond India, abets the commission of any act in India which would constitute an offence if committed in India.”

Illustration:

A, in country X, instigates B to murder in India; A is guilty of abetting murder.¹⁰

¹⁰ The Bharatiya Nyaya Sanhita, 2023 (Act 45 of 2023), s.48.

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C. Abetment of Offence by public or more than ten persons

Relevant Section in Bharatiya Nyaya Sanhita,2023	Relevant Section in Indian Penal Code,1860
Section 57	117

The legislature has changed the quantum of punishment provided earlier under s.117 IPC,1860, from three years to seven years under s. 57 BNS,2023, making the law more stringent. S.57 BNS,2023 provides that:

Whoever abets the commission of an offence by the public generally or by any number or class of persons exceeding ten shall be punished with imprisonment of either description for a term extending to **seven years** and with a fine.¹¹

CH-V Offences Against Women and Children

A. Rape

Relevant Section in Bharatiya Nyaya Sanhita,2023	Relevant Section in Indian Penal Code,1860
Section 63	375

Modification under Exception 2 of section 63 BNS,2023 provides that sexual intercourse by a man with his wife where the wife is **not below the age of 18 years** shall not be considered rape. Earlier, under section 375 IPC,1860, the age of the wife was provided not below 15 years.

In the case of *Independent Thought v. Union of India and Ors.*¹¹ was held by the honourable Supreme Court that while reading Exception 2 under section 375 IPC,1860,sexual intercourse with a girl with or without her consent, whether against her will or not, by her husband or anybody else amounts to rape.

¹¹ The Bharatiya Nyaya Sanhita, 2023 (Act 45 of 2023), s.57.

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B. Sexual intercourse by employing deceitful means

Relevant Section in Bharatiya Nyaya Sanhita,2023	Relevant Section in Indian Penal Code,1860
Section 69	-*

Section 69 BNS,2023 provides:

“Whoever, by deceitful means or by making a promise to marry to a woman without any intention of fulfilling the same, has sexual intercourse with her, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.”

Explanation. — “deceitful means” shall include inducement for, or false promise of employment or promotion, or marrying by suppressing identity¹²

This section provides punishment for cases where a man has sexual intercourse with a woman by falsely promising her without the intention to marry her.

C. Gang Rape

Relevant Section in Bharatiya Nyaya Sanhita,2023	Relevant Section in Indian Penal Code,1860
Section 70(2)	-*

An additional provision has been inserted in section 70 BNS,2023, in the form s.70(2) with a proviso which provides:

“Where a woman under eighteen years of age is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person’s natural life, and with fine, or with death:.”

¹² The Bharatiya Nyaya Sanhita, 2023 (Act 45 of 2023), s.69.

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Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided further that any fine imposed under this subsection shall be paid to the victim¹³

The legislature has inserted the provision mentioned above with the intent to make the law more stringent in gang rape cases where the age of the victim is less than 18 years. Here, a proviso has been added to compensate the victim. Earlier, no such provision was made in IPC,1860.

D. Intent to Disrobe

Relevant Section in Bharatiya Nyaya Sanhita,2023	Relevant Section in Indian Penal Code,1860
Section 76	354B

Under s.76 BNS,2023, the word “Any man” has been replaced by the word “whoever”, which means that now not only man but any person who commits the offence under this section shall be liable to the punishment provided.

E. Voyeurism

Relevant Section in Bharatiya Nyaya Sanhita,2023	Relevant Section in Indian Penal Code,1860
Section 77	354C

The term "Any man" has been replaced with "whoever" in section 77 BNS, 2023. This indicates that anyone who violates this section will be subject to the punishment specified, not just men.

F. Hiring Children to commit an offence

Relevant Section in Bharatiya Nyaya Sanhita,2023	Relevant Section in Indian Penal Code,1860

¹³ The Bharatiya Nyaya Sanhita, 2023 (Act 45 of 2023), s.70(2).

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Sanhita,2023	Code,1860
Section 95	.*

Section 95 has been newly inserted under BNS,2023, which aims to criminalise the offence related to hiring, engaging, and employing children under 18 years to commit crimes. S.95 also prescribes the punishment for the same. This section reads as follows:

“Whoever hires, employs or engages any child to commit an offence shall be punished with imprisonment of either description which shall not be less than three years but which may extend to ten years, and with fine; and if the offence be committed shall also be punished with the punishment provided for that offence as if the offence has been committed by such person himself.”

Explanation. —Hiring, employing, engaging, or using a child for sexual exploitation or pornography is covered within the meaning of this section.¹⁴

G. Procurement of Child

Relevant Section in Bharatiya Nyaya Sanhita,2023	Relevant Section in Indian Penal Code,1860
Section 96	366A

The term "minor girl" has been replaced with "child" in section 96 BNS, 2023. The word “child” has already been defined under s.2(3) of this Sanhita. This modification criminalises the procurement of a child of any gender who is below the age of 18 years.

In the case of Mohandas Suryavanshi v. State of M.P., it was held by the honourable Madhya Pradesh High Court that when the accused took prosecutrix under the age of 16 years from a village called Chiranga to Ambikapur to have illicit intercourse then, he had committed an offence under the said provision.

H. Buying Child for Prostitution

Relevant Section in Bharatiya Nyaya Sanhita,2023	Relevant Section in Indian Penal Code,1860
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¹⁴The Bharatiya Nyaya Sanhita, 2023 (Act 45 of 2023), s.95.

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Section 99**373**

The term "minor" has been replaced with "child" in section 99 BNS, 2023. Under this provision, the legislature has also increased the quantum of punishment to seven years minimum and fourteen years maximum.

CH-VI Offences Affecting Human Body**A. Murder**

Relevant Section in Bharatiya Nyaya Sanhita, 2023	Relevant Section in Indian Penal Code, 1860
Section 101	300

“If the act by which the death is caused” has been inserted under clause (b) to (d) of s.101 BNS, 2023, as compared to s.300 IPC, 1860.

In the case of *Raj Paul Singh and Ors. v. State through P.S. Musheerabad, Hyderabad*, the honourable court held that when an offender stabs a person without having a threat from him, then no court can consider that the accused had not acted cruelly.

B. Mob Lynching

Relevant Section in Bharatiya Nyaya Sanhita, 2023	Relevant Section in Indian Penal Code, 1860
Section 103(2)	-*

Section 103(2) has been newly inserted under BNS, 2023. This provision provides the meaning of mob lynching and provides punishment in case a person is murdered during mob lynching. Section 103(2) provides:

“When a group of five or more persons acting in concert murders on the ground of race, caste or community, sex, place of birth, language, personal belief or any other

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similar ground, each member of such group shall be punished with death or with imprisonment for life, and shall also be liable to fine.”¹⁵

In the case of Vijay Pandurang Thakre v. State of Maharashtra, it was held by the Hon’ble Supreme Court that only having mere knowledge and common intention does not create an unlawful assembly; active participation is an essential element of the same.

C. Murder by life Convict

Relevant Section in Bharatiya Nyaya Sanhita,2023	Relevant Section in Indian Penal Code,1860
Section 104	303

Under section 104 BNS,2023, punishment for murder by a life convict now also includes life imprisonment, which means imprisonment for his whole life until the person naturally dies.

D. Punishment for Culpable homicide not amounting to murder

Relevant Section in Bharatiya Nyaya Sanhita,2023	Relevant Section in Indian Penal Code,1860
Section 105	304

Under section 105 BNS,2023, punishment for Culpable homicide not amounting to murder now includes a minimum imprisonment of 5 years and a fine as well.

E. Causing Death by negligence

Relevant Section in Bharatiya Nyaya Sanhita,2023	Relevant Section in Indian Penal Code,1860
Section 106	304A

¹⁵ The Bharatiya Nyaya Sanhita, 2023 (Act 45 of 2023), s.103(2).

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Section 106(1) provides a modified punishment of a maximum of 5 years imprisonment for causing death by negligence not amounting to culpable homicide, and in cases where a medical practitioner causes death, punishment of a maximum of 2 years has been prescribed by the statute. This provision also specifies who shall be considered a registered medical practitioner.

Section 106(2) has been modified to reduce hit-and-run cases. Under this provision, the punishment for the offence has been increased to 10 years imprisonment.

“Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide and escapes from the scene of an incident or fails to report the incident to a Police officer or Magistrate soon after the incident shall be punished with imprisonment of either description of a term which may extend to ten years, and shall also be liable to fine.”¹⁶

F. Organised Crimes and Terrorist Act

Relevant Section in Bharatiya Nyaya Sanhita,2023	Relevant Section in Indian Penal Code,1860
Section 111-113	-*

Sections 111 to 113 have been inserted under BNS,2023, which provides provisions related to organised crimes and terrorist acts.

Clause (a) to (d) of s.111 BNS,2023 provides the meaning of the words “benefit”, “organised crime syndicate”, “continuing unlawful activity”, and “economic offences”.

G. Hurt

Relevant Section in Bharatiya Nyaya Sanhita,2023	Relevant Section in Indian Penal Code,1860
Section 117	-*

¹⁶ The Bharatiya Nyaya Sanhita, 2023 (Act 45 of 2023), s.106(2).

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Section 117(3) has been newly inserted by BNS,2023, which provides punishment for hurt to a person which causes that person to be in permanent disability or persistent vegetative state¹⁷.Such a person shall be punished with a minimum of 10 years and a maximum of life imprisonment.

Section 117(4) has also been newly inserted by the legislature under BNS,2023, which provides punishment for grievous hurt caused by the mob to a person, which may extend up to 7 years.

Some other modifications have also been made from s.118 to s.124 concerning the quantum of punishment for acts causing grievous hurt.

H. Kidnapping, Abduction, Slavery & Forced Labour.

Relevant Section in Bharatiya Nyaya Sanhita,2023	Relevant Section in Indian Penal Code,1860
Section 137-146	359-374

From s.137 to s.146, "minor" has been replaced by the word "child." Under s.139, the quantum of punishment has also been changed to a minimum of 10 years and a maximum of life imprisonment. Punishment for the offence of "exploitation of trafficked person" under s.142 has also changed.

In the case of Mafat Lal v, State of Rajasthan, it was held by the honourable court that enticing or taking away a minor under the age of 18 years in case of female is an essential element for kidnapping.

CH- VII Offences Against the State

A. Acts endangering the sovereignty, unity & integrity of India

Relevant Section in Bharatiya Nyaya Sanhita,2023	Relevant Section in Indian Penal Code,1860
Section 152	-* (Based upon s.124A)

¹⁷ The Bharatiya Nyaya Sanhita, 2023 (Act 45 of 2023), s.117(3).

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S. 152 has been added by the parliament to protect India's sovereignty, integrity, and unity. S.152 provides:

“Whoever, purposely or knowingly, by words, either spoken or written, or by signs, or by visible representation, or by electronic communication or by use of financial mean, or otherwise, excites or attempts to excite, secession or armed rebellion or subversive activities, or encourages feelings of separatist activities or endangers sovereignty or unity and integrity of India; or indulges in or commits any such act shall be punished with imprisonment for life or with imprisonment which may extend to seven years, and shall also be liable to fine.”

Explanation. —Comments expressing disapprobation of the Government's measures or administrative or other action to obtain their alteration by lawful means without exciting or attempting to excite the activities referred to in this section do not constitute an offence under this section.¹⁸

In the case of Bilal Ahmed Kaloo v. State of Andhra Pradesh, it was held by the apex court that acts which would bring the government into hatred or contempt would amount to a decisive element for establishing the offence of Sedition.

CH-X Offences relating to Coin, Currency, Notes, Bank Notes, and Government Stamps

Relevant Section in Bharatiya Nyaya Sanhita,2023	Relevant Section in Indian Penal Code,1860
Section 178	Section 230-232,246-249,255,298A.

The new statute contains the same provision under Chapter X, which was present in Chapter XVIII of the IPC,1860.

Modifications have been made under s.178, which provides the meaning of “coin and government stamps” and describes the offence of “counterfeiting coin and government stamps.” Some other changes have also been made regarding acceptable under chapter X BNS,2023.

CH XI Offences Against Public Tranquillity

Relevant Section in Bharatiya Nyaya	Relevant Section in Indian Penal

¹⁸ The Bharatiya Nyaya Sanhita, 2023 (Act 45 of 2023), s.152.

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Sanhita,2023	Code,1860
Section 196-197	Section 153A - 153B

S.196 & s.197 BNS,2023 also provides for the inclusion of electronic communication.

S.197(d) has been newly inserted which provides:

“Makes or publishes false or misleading information, jeopardising the sovereignty, unity and integrity or security of India.”¹⁹

CH XIII Contempt of Lawful Authority of Public Servants

Relevant Section in Bharatiya Nyaya Sanhita,2023	Relevant Section in Indian Penal Code,1860
Section 226	-*

Section 226 has been newly added by the legislature, which provides:

“Whoever attempts to commit suicide with the intent to compel or restrain any public servant from discharging his official duty shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both, or with community service.”²⁰

In the case of Gian Kaur v. State of Punjab, the honourable Supreme Court held that section 309 IPC,1860, is not constitutionally valid.

Some other changes have been made regarding the quantum of fines and imprisonment under chapter XIII of BNS,2023, as compared to IPC,1860.

CH XIII Offence Against Property

A. Theft

Relevant Section in Bharatiya Nyaya Sanhita,2023	Relevant Section in Indian Penal Code,1860
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¹⁹ The Bharatiya Nyaya Sanhita, 2023 (Act 45 of 2023), s.197(d).

²⁰ The Bharatiya Nyaya Sanhita, 2023 (Act 45 of 2023), s.226.

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Section 303	378-379
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Section 303 BNS,2023 has been modified and proviso added.

B. Snatching

Relevant Section in Bharatiya Nyaya Sanhita,2023	Relevant Section in Indian Penal Code,1860
Section 304	-*

S.304 BNS,2023 has been newly inserted, which provides meaning for the word “snatching” and prescribes punishment for the offence of snatching.S.304 BNS provides:

- (1) Theft is snatching if, to commit theft, the offender suddenly or quickly or forcibly seizes or secures or grabs or takes away from any person or from his possession of any movable property.
- (2) Whoever commits snatching shall be punished with imprisonment of either description for a term extending to three years and shall also be liable to a fine²¹.

C. Theft in Dwelling House, or means of transportation or place of worship, etc.

Relevant Section in Bharatiya Nyaya Sanhita,2023	Relevant Section in Indian Penal Code,1860
Section 305	380

The provision of theft for any means of transport, place of worship, or idol for prayer has been inserted under s.305 BNS,2023.

Some other changes have been made in the quantum of punishment in offences relating to cheating and criminal breach of trust under s.314- s.316 BNS,2023.

D. Mischief

²¹ The Bharatiya Nyaya Sanhita, 2023 (Act 45 of 2023), s.304.

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Relevant Section in Bharatiya Nyaya Sanhita,2023	Relevant Section in Indian Penal Code,1860
Section 324	Section 425-427,440

Some new changes have been added under s.324(3) and (5) to criminalise acts of damaging govt—Or local authority property.

CH -XIX Criminal Intimidation, Insult, Annoyance, Defamation, etc.

A. Statements Conducting to public mischief

Relevant Section in Bharatiya Nyaya Sanhita,2023	Relevant Section in Indian Penal Code,1860
Section 353	Section 505

S.353 BNS,2023 provides a new modification in section 505 IPC,1860. S.353 BNS,2023 added words publication of “false information” and “through electronic means” in addition to the earlier section 505 IPC,1860.

B. Misconduct in Public by a Drunken Person

Relevant Section in Bharatiya Nyaya Sanhita,2023	Relevant Section in Indian Penal Code,1860
Section 355	Section 510

Under section 355, BNS punishment has been increased, including a fine of one thousand community service or both.

C. Defamation

Relevant Section in Bharatiya Nyaya Sanhita,2023	Relevant Section in Indian Penal Code,1860
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Section 356	Section 499-502
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Section 356, BNS has added the word “in any manner” in the existing definition of IPC,1860. Punishment of community service has also been added under the new Sanhita.

CH XX Repeal and Savings

Relevant Section in Bharatiya Nyaya Sanhita,2023	Relevant Section in Indian Penal Code,1860
Section 358	*_

S.358 BNS,2023 is newly inserted by the legislature, which provides that IPC,1860 was repealed after this Sanhita.

DISCONTINUED PROVISION

Relevant Section in Indian Penal Code,1860	Relevant Provision in Indian Penal Code,1860
Section 14	Servant of Government
Section 18	India
Section 29A	Electronic record
Section 50	Section
Section 53A	Construction of reference to transportation
Section 124A	Sedition
Section 153AA	Punishment for knowingly carrying arms in any procession
Section 254	Delivery of coin as genuine, which, when first possessed, the deliverer did not know to be altered
Section 264 to 267	Offences relating to weights and measures

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Section 309	Attempt to commit suicide.
Section 310 to 311	Thug and Punishment of Thug
Section 376DA & 376DB	Gang rape on women under the age of 16 and 12, respectively
Section 377	Unnatural Offences (Sexual intercourse against the order of nature)
Section 444	Lurking house-trespass at night
Section 446	Housebreaking at night
Section 497	Adultery ²²

CONCLUSION

The comparative study of the Bharatiya Nyaya Sanhita 2023 and the Indian Penal Code 1860 has provided a comprehensive understanding of their roles, similarities, and differences within the Indian criminal justice system. The findings of this research contribute to the ongoing discourse on legal reforms, harmonisation, and the pursuit of an equitable and efficient criminal justice system in India. The increased punishments will help make the law more stringent, and introducing new offences will help widen the scope of substantive criminal law in the Indian criminal justice system. However, several flaws can still be observed in the new Sanhita, such as the punishment of community service is nowhere defined, no provision for gender neutrality regarding the offence of rape and sexual assault is introduced, and no major change in sedition law. BNS,2023, was introduced to replace IPC,1860, to remove the prints of colonial rule from the Indian Criminal Justice System. Still, it can only be considered a successor as it mainly contains the provision of existing code.

²² The Indian Penal Code, 1860 (Act 45 of 1860).

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