
INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH

KEY CHANGES IN THE BNS, BNSS AND BSA – A SHIFT OR JUST REBRANDING?

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Abstract:

The Indian criminal justice system has undergone a significant statutory shift with the enactment of the Bharatiya Nyaya Sanhita, 2023 (BNS), Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), and Bharatiya Sakshya Adhiniyam, 2023 (BSA), replacing the Indian Penal Code, 1860, Code of Criminal Procedure, 1973, and the Indian Evidence Act, 1872 respectively. While the government touts this development as a long-overdue decolonization of Indian criminal law, scholars and practitioners have raised pressing concerns about whether these changes reflect genuine reform or are merely symbolic. This paper examines the objectives, structure, and practical impact of the new laws, critically analyzing whether they introduce substantive transformation or merely repackage colonial concepts under indigenous labels. Through doctrinal and comparative analysis, this study interrogates whether the legislative overhaul reflects a paradigmatic shift or a cosmetic transition in India's legal landscape.

Keywords:

Bharatiya Nyaya Sanhita, Criminal Law Reform, BNSS, BSA, IPC, CrPC, Evidence Act, Legal Rebranding, Constitutional Morality.

I. Introduction

The Indian criminal legal system has long been critiqued for its colonial origins, outdated procedures, and systemic insensitivity towards victims. With the introduction of the BNS, BNSS, and BSA, the Union Government of India claims to have taken a revolutionary step in reshaping

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the framework of criminal justice. These new legislations, which came into force on 1st July 2024, aim to do away with archaic elements and replace them with laws tailored to a modern, democratic India.

However, despite the new nomenclature and select provisions indicating progress, the bulk of these statutes mirror their predecessors. This raises an important question: Are these enactments genuine reforms of criminal law principles, or are they largely rebranded texts with cosmetic changes? This paper attempts to answer this through a multi-dimensional lens.

II. Research Problem

Do the new criminal laws — BNS, BNSS, and BSA — represent a substantive reform in the Indian criminal justice system, or do they predominantly reflect symbolic or stylistic changes that continue the legacy of colonial legislation?

III. Literature Review

The debate on reform versus rebranding in law reform is not new. Jurists like Upendra Baxi have long emphasized the need for decolonizing Indian jurisprudence not just in text but in spirit. Recent academic reviews, including those published by PRS Legislative Research and critiques from legal commentators, reflect skepticism about the extent of reform. Critics argue that while terms have been indigenized and some progressive features introduced (such as community service or trial in absentia), a significant proportion of provisions in BNS and BNSS replicate those in the IPC and CrPC respectively. Moreover, concerns about vague language, especially in provisions replacing sedition, raise constitutional questions regarding misuse.

IV. Objectives of the Study

1. To trace the historical background of the three replaced colonial legislations.
2. To analyze the key provisions of BNS, BNSS, and BSA in comparison to their predecessors.
3. To evaluate whether the changes are substantive or stylistic.
4. To examine the reforms from the lens of constitutional values and jurisprudential reasoning.
5. To investigate practical implications and implementation challenges.

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V. Hypothesis

While the enactment of BNS, BNSS, and BSA aims at reforming the criminal justice system, the hypothesis is that these legislations represent more of a semantic and stylistic rebranding rather than substantive transformation in criminal jurisprudence.

VI. Research Methodology

This research adopts a doctrinal and comparative methodology. It includes an analysis of statutory texts (old and new), parliamentary debates, secondary literature including articles, commentaries, and government reports. Case law analysis is employed to understand interpretative trends. The research further incorporates theoretical perspectives, particularly postcolonial legal thought and constitutional morality.

VII. Comparative Analysis

A. Bharatiya Nyaya Sanhita (BNS) vs. Indian Penal Code (IPC):

The BNS has been projected as a people-centric and victim-oriented law. It introduces notable changes like community service as punishment, statutory recognition of mob lynching and hate crimes, and expansion of terrorism-related offences. Section 2(2) of BNS defines organised crime, while new Sections 109–114 deal with terrorism and offences threatening national security.

However, approximately 80% of provisions are direct replicas of the IPC. Section 150 of the BNS, which replaces the repealed Section 124A (Sedition) of IPC, continues to suffer from vague phrasing—"endangering the sovereignty or unity of India"—and risks similar misuse. Despite public statements on removing colonial vestiges, provisions like criminal conspiracy (Section 61 BNS, similar to Section 120A IPC) remain unchanged.

Gender neutrality is selectively applied—certain sexual offences retain a maleperpetrator/femalevictim binary, excluding male and LGBTQIA+ victims. Punishments have been made stricter for offences like rape, but provisions for marital rape remain unaddressed.

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In sum, while BNS incorporates some progressive elements, it largely rephrases IPC content, raising questions on whether it qualifies as a structural reform.

B. Bharatiya Nagarik Suraksha Sanhita (BNSS) vs. Code of Criminal Procedure (CrPC):

BNSS attempts modernization by introducing digital FIRs, electronic summons, mandatory forensic examination for heinous offences, and filing of charge sheets online. Section 176 mandates forensic teams for offences punishable with 7+ years. BNSS also fixes time limits—60 days for investigation (Section 193), 7 days for judgment post arguments (Section 258)—in an attempt to reduce delays.

However, core procedural structure remains nearly identical to CrPC. Several controversial changes raise constitutional questions:

- **Trial in Absentia (Section 356):** Though aimed at fugitives, it may violate Article 21 rights if due safeguards aren't ensured.
- **Custodial period extension:** BNSS allows 90–120 days for investigation in serious crimes, mirroring CrPC.

Critics argue that procedural rigidity is retained and digital reforms may remain on paper due to lack of infrastructure, especially in rural India. Police reform, judicial sensitivity, and legal aid remain unaddressed—key areas for procedural justice.

C. Bharatiya Sakshya Adhiniyam (BSA) vs. Indian Evidence Act (IEA):

The BSA replaces the 151-year-old IEA with a modern structure more attuned to the digital age. It recognises electronic records as primary evidence (Section 61–66), video conferencing testimonies, and cloud-based storage documents. Presumptions regarding digital signatures, emails, and server logs are now embedded in statutory language.

While these changes align Indian evidence law with global practices (like UK's PACE or

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Singapore's Evidence Act), BSA largely retains the philosophical base of IEA—oral vs documentary evidence, relevance, admissibility, and burden of proof remain consistent.

Key changes include:

- Reversal of burden in terror financing and organized crime
- Expanded admissibility for electronic business records
- Reduction of discretion in evaluating digital documents

However, concerns remain about over-reliance on digital evidence, given weak cyber forensic infrastructure and limited data protection laws in India. For instance, unauthenticated WhatsApp messages or server-based metadata could be misused without stringent judicial gatekeeping.

Thus, BSA makes critical updates but is more of a technology adaptation than a conceptual overhaul.

VIII. Constitutional and Jurisprudential Evaluation

The success and acceptability of any law must be tested against the foundational values of the Constitution. The Supreme Court has reiterated that laws inconsistent with constitutional morality, equality, and individual autonomy are liable to be struck down.

1. **Constitutional Morality vs. Popular Morality:** *Navtej Singh Johar v. Union of India* (2018) held that individual rights cannot be curtailed merely due to majoritarian views.
2. **Rule of Law and Due Process:** *Government of NCT of Delhi v. Union of India* (2018) stressed that laws must be fair both in text and in application.
3. **Gender Justice:** *Joseph Shine v. Union of India* (2018) emphasised dismantling patriarchal biases in law.
4. **Proportionality Doctrine:** *Modern Dental College v. State of M.P.* (2016) requires that any restriction on rights be necessary and minimally impairing.

IX. Practical Challenges and Implementation Concerns

1. **Technological Gaps:** Rural infrastructure may hinder digital implementation.

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2. **Training Needs:** Police, lawyers, and judges require updated training.
3. **Judicial Backlog:** Timelines in BNSS may fail without more judges.
4. **Forensic Overload:** Labs lack capacity to meet BNSS mandates.
5. **Risk of Authoritarian Misuse:** Vague provisions could be weaponised against dissent.

X. Conclusion and Suggestions

The BNS, BNSS, and BSA mark a symbolic departure from colonial law but fail to revolutionize Indian criminal jurisprudence. Their effectiveness depends on:

- Narrower drafting of vague provisions
- Uniform gender-neutral laws
- Infrastructure upgrades and training
- Judicial sensitivity and legal awareness

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