
Performance of the Bharatiya Nyaya Sanhita, 2023-An Assessment

Original Research Article | Volume 1 | Issue 3 | 2026 | Article Number: 002

Accepted: 15 July 2026 | Published: 10 August 2026 | ISSN: 2979-8582 (Online)



Crossref : <https://doi.org/10.67693/BJCR-8RVCEV3S>



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Abstract

The Bharatiya Nyaya Sanhita, 2023 (BNS) is considered to be India's most crucial substantive criminal-law reform after the Indian Penal Code, 1860. It came into force on 1 July 2024, replacing the IPC aimed at modernising the criminal law, equipped to deal with the most sophisticated techno-based crimes, strengthened protection for women and children, incorporated new organised crime and terrorism, and introduced community service as a form of punishment. The BNS is not just a renaming exercise but as a substantive reorganisation of criminal offences and punishments. Yet, its performance must be assessed cautiously. Since it has been operational for a relatively short period, its success cannot be judged solely by the number of provisions introduced. Its real performance depends on police training, prosecutorial capacity, judicial interpretation, forensic infrastructure, legal awareness, constitutional safeguards, and the coordinated functioning of the BNS with the Bharatiya Nagarik Suraksha Sanhita, 2023 and Bharatiya Sakshya Adhiniyam, 2023. This paper critically assesses the BNS by examining its performance achievements, practical difficulties in implementation, constitutional issues and future prospects.

Keywords: Bharatiya Nyaya Sanhita, Criminal Law Reform, Indian Penal Code, Community Service, Organised Crime, Terrorism, Cybercrime, Criminal Justice Administration

1. Introduction

Historically, the Indian criminal justice system has been governed by the Indian Penal Code, 1860, a colonial-era statute drafted by T.B. Macaulay. Despite its frequent amendments and judicial interpretations having its roots in 19th century social, economic and technological conditions. The ever rising

cybercrimes, financial scams, organised criminal networks, gender-specific crimes and techno enabled crimes paved the way for creation of a modernised substantive penal law.

The Bharatiya Nyaya Sanhita, enacted on 25 December 2023 w.e.f. 1 July 2024, with a few exceptions. The BNS has 358 sections, while old IPC had 511 sections. The number of provisions reduced in number, few provisions are merged and , rearranged and redrafted, with very few minor changes

The performance of the BNS can be better evaluated through the following parameters:

1. Did the BNS really modernise the substantive portions of criminal law?
2. Whether the victim's protection has improved?
3. Whether the BNS reformed punishments and made them more proportionate ?
4. Whether BNS is strengthened to deal effectively with organised and technological crimes of modern day?
5. Whether it adequately safeguards constitutional rights and protects civil liberties?
6. Whether the Police, Prosecutors and Courts are enforcing perfectly in the field?

2. Legislative Background and Objectives of the BNS

The BNS was introduced as part of a mega transformation of Indian criminal law, operating alongwith Bharatiya Nagarik Suraksha Sanhita, 2023, replacement of Code of Criminal Procedure, 1973, and the Bharatiya Sakshya Adhinyam, 2023, which replaces the Indian Evidence Act, 1872.

The BNS was aimed at consolidating and amending the offences and related matters. It is designed to respond to the emerging crimes while maintaining the status quo on the basic principles of intention, knowledge, attempt, abetment, conspiracy, general exceptions etc.,

Prime objectives of the BNS included,

1. Reframing the colonial terminology in IPC
2. Special focus on the offences affecting the Women and Children;
3. Incorporated new form of punishment i.e, Community service for the petty offences
4. Terrorism and organised crime are newly included
5. Moblynching and Group violence are recognised
6. Dealing with certain economic and techno- based crimes
7. Overlapping IPC provisions are consolidated
8. Victim-centric Approach
9. Stringent dealing with the Graver Offences

Aspirations and actual performance are two different things. Even the Progressive provisions may also fail, if the rules are vague and if the institutions lack capacity to deal with.

3. Achievements of the Bns

Substitution of the Age Old Colonial Terminology:

Greatest landmark achievement is the departure from the IPC's colonial identity. It is also a fact that, just renaming cannot itself remove colonial practices such as arbitrary policing, custodial violence, delay, under-trial detention and unequal access to legal representation.

Recognition of Community Service As Punishment

This is a significant reform because traditional criminal sentencing in India has largely relied on imprisonment, fine, forfeiture and capital punishment. Community service provides a potentially reformative alternative for minor and non-violent offences.

This prevents the overcrowding of prisons and allows fresh offenders to make useful and constructive contributions to society. It may be particularly useful where imprisonment would be disproportionate to the gravity of the offence.

Special Care In Respect of Offences Against Women And Children

The BNS 2023 retained strengthened the provisions relating to Rape, Gang rape, stalking, Voyeurism, Trafficking and Sexual harassment. Stringent punishment for sexual violence is significant component.

The BNS also require the need to have more sensitive approaches in investigating and statement recordings of crimes where women and children are involved. The new criminal laws stipulate for certain procedural precautions, that women officers have to record statements in such cases.

For the better performance of these provisions requires,

- a. Registering such complaints instantly
- b. Impartial sensitive Investigation
- c. Accessibility to medical and psychological support services
- d. Higher standards of witness protection
- e. Faster trials
- f. Effective Prosecution
- g. Proper protection from criminal intimidation and social stigma.

The performance of the BNS in protecting women must be assessed by access to justice, conviction quality, survivor experience but not by enhanced punishment.

Addressed the Organised Crimes and Terrorism

The BNS clearly addresses organised crime and the acts of terrorism. This can be considered to be landmark progress and achievement since it is plaguing the democratic nations all over the world including India. This inclusion would improve investigators and prosecutors' ability to address activities of the collective criminal syndicates.

The terrorism and organised crimes require a scientific, clear interpretation. Vague language tends to harm innocent citizens as broader vague definitions may sometimes be applied wrongly on the genuine persons whose acts may not actually affect the national security or public safety at all. Therefore, courts must insist on strict proof of the statutory ingredients, including intention, participation, knowledge and connection with the alleged criminal organisation.

Mob Violence and Group Murder - New Inclusion

The BNS for the first time introduced a new offence i.e., Murder by a group of five or more persons on specified grounds. This provision is very crucial and vital as Mob violence and Lynching pose a serious threats law and order situation and the rule of law. Recognition of Group Murder conveys a message to the society that the State would seriously deal with violent group Murders in the society. It further exhibits that the State, at all costs tries to prevent such violence based on caste, community, language, belief or similar identity-related grounds, would be dealt with stringently. Still there some doubts and concerns appear on the actual Proof, needed to establish Motive of the Accused.

Effective prosecution will require careful investigation into the planning, communication, identity-based motive and individual role of each accused. Courts must avoid both under-enforcement and indiscriminate prosecution.

Consolidation and Simplification:

The BNS reduces the total number of provisions by consolidating several IPC offences. This may make the statute easier to navigate in some areas. A more compact code can benefit students, police officers, prosecutors and courts if the language is clear and cross-references are manageable.

However, simplification should not be confused with clarity. A shorter statute may create interpretative problems when old provisions are merged, modified or relocated. Lawyers and judges must now determine whether earlier IPC precedents continue to apply to equivalent BNS provisions. This transitional issue has substantial practical importance.

Performance in Relation to Techno-Based Crime

The stronger justification for enactment of the BNS, is that the IPC was drafted before the emergence of information and communication technology i.e, digital platforms, artificial intelligence etc.,. Modern criminal law is expected to respond to the offences committed through technology. The BNS is expected to operate with other laws dealing with cyber-crime, including the Information Technology Act, 2000. It provides a broader substantive criminal law framework for offences involving deception, cheating, forgery, identity-related fraud and organised criminal activity.

However, the performance of the BNS in respect of cyber crime mainly depends on the capacity of the institutions. Police stations often lack trained cyber crime personnel, forensic laboratories are unevenly distributed and digital evidence can be lost or altered quickly. The legal definition of an offence is only the first step; successful prosecution requires digital forensics, chain-of-custody procedures, expert witnesses and cooperation from online platforms. Thus, the BNS has potential in addressing technology-enabled crime, but its performance remains dependent on investment in technical infrastructure and specialised investigation.

Victim-Centric BNS: Projections and Reality

The BNS is frequently described as victim-oriented. This is reflected in its emphasis on serious crimes, sexual offences, trafficking, group violence and public safety. The broader new criminal-law framework also seeks greater communication with complainants and victims.

The BNS alone cannot achieve these goals. Its substantive provisions must operate with effective procedure under the BNSS and reliable evidence rules under the BSA. A victim who cannot register an FIR, obtain medical assistance, access legal aid or attend court safely will not benefit merely because the penal provision has changed. Therefore, the BNS should be evaluated as one part of a criminal justice ecosystem rather than as a self-sufficient solution.

4. Critical Evaluation**Few Deviations from the IPC**

- A major criticism is that the BNS substantially retains the structure and content of the IPC. Many offences have been renumbered, rearranged or slightly modified rather than drastic changes and modifications. This continuity may be useful for legal stability, but it weakens the claim that the BNS is a complete transformation of criminal law.

It is better to describe the BNS as a substantially revised, and consolidated Law than the complete substitution of an entirely new criminal law

Offence of Sedition-Few Apprehensions

The IPC offence of sedition was not retained in its old form. However, the BNS includes provisions

relating to acts endangering sovereignty, unity and integrity of India. According to Critics, the new formulation may be wider than the earlier sedition provision in some respects.

The Supreme Court's constitutional jurisprudence has consistently protected free speech while allowing reasonable restrictions under Article 19(2). Any application of BNS provisions affecting speech must therefore be tested against necessity, proportionality and a clear connection with public disorder, violence or threats to national security.

Broad and Potentially Vague Drafting

Some provisions of the BNS may create uncertainty because of broad expressions such as "terrorist act," "organised crime," "economic security" or conduct threatening national unity. Broad language can be useful in addressing evolving crime, but it can also permit inconsistent enforcement.

Criminal statutes must satisfy the principle of legality: citizens should be able to understand what conduct is prohibited, and enforcement authorities should not possess unlimited discretion. Vagueness may violate fairness under Article 21 because a person cannot regulate conduct according to an unclear criminal prohibition. The judiciary must therefore interpret broad provisions narrowly and insist upon proof of specific statutory elements.

Concerns on Severity of Punishment

The BNS retains severe punishments for many offences and expands punishment in certain areas. Deterrence is necessary for grave crimes, but punishment must remain proportionate. Excessive reliance on imprisonment can worsen prison overcrowding and may not reduce crime where detection and conviction rates remain low.

The criminal justice system should focus not only on harsh sentencing but also on certainty of detection, quality investigation, speedy trial and rehabilitation. A punishment system that is severe on paper but inconsistently enforced does not create effective deterrence.

In-adequacy for Sentencing Guidelines

The BNS introduces community service but does not itself provide a comprehensive sentencing framework. Indian courts have traditionally exercised broad discretion in sentencing. While judicial discretion is necessary, unstructured discretion can produce unequal outcomes.

Transitional Confusion and Legal Uncertainty

- The shift from IPC provisions to BNS provisions creates immediate difficulties for police officers, advocates, judges, law students and prison authorities. Old case law remains relevant only where the BNS provision is substantially similar to the IPC provision. Where language has changed, courts must reconsider earlier interpretations.

The initial years of BNS implementation are therefore likely to involve interpretative disputes and inconsistent practice across States.

Institutional Challenges in Implementation

Police Training

The performance of the BNS depends heavily on police officers who register FIRs, investigate offences, collect evidence and file charge sheets. Police personnel require training not only on new section numbers but also on changed ingredients of offences, digital evidence, victim rights and constitutional safeguards.

Public-awareness programmes and police training initiatives have been undertaken in some areas,

including programmes intended to explain the new criminal laws to citizens and officers.

However, isolated training programmes are insufficient. India requires continuous, standardised and practical training at the level of police stations, prosecution offices and judicial academies.

Forensic and Technological Capacity

The success of modern criminal law requires scientific investigation. Serious offences increasingly involve mobile data, CCTV footage, DNA evidence, electronic communication, financial trails and digital records.

Forensic capacity remains uneven across India. Delays in forensic reports can delay investigation and trial. If the law expects scientific investigation but laboratories lack staff, equipment or timely procedures, statutory reform will not produce effective justice.

Judicial Backlog

The BNS does not by itself solve the long-standing problem of pendency in criminal courts. Delayed trials weaken deterrence, harm victims and prolong the suffering of accused persons, especially under-trials.

Prosecution and Legal Aid

Public prosecutors play a central role in ensuring that serious cases are properly presented before courts. They require training in the new provisions, electronic evidence, forensic reports and victim communication.

Similarly, legal aid lawyers must understand the BNS to protect the rights of indigent accused persons. Criminal-law reform must not become a technical advantage available only to well-resourced litigants.

4. Suggestions for Improvement in BNS Performance:

1. Need for Comprehensive Sentencing Guidelines

The Union Government, High Courts and judicial academies should develop sentencing guidance for imprisonment, fines and community service. Such guidance should promote proportionality and consistency.

2. To Create Detailed Police and Prosecution Manuals

Every State should prepare BNS-based manuals explaining, corresponding IPC and BNS provisions, ingredients of offences, investigation checklists, arrest safeguards, evidence requirements, digital evidence procedures, victim-support mechanisms, etc.,

3. To Strengthen Forensic Infrastructure

Forensic laboratories should be expanded, adequately staffed and technologically upgraded. Serious offences should receive timely forensic examination, and courts should receive reports without avoidable delay.

4. To Protect Speech and Dissent Through Clear Guidelines

Governments should issue strict guidelines for registration and investigation of offences involving sovereignty, unity, public order and national security. Prior legal review by senior officers may reduce misuse.

5. To Establish Community-Service Frameworks

Community service should be implemented through transparent rules. Courts should specify the nature, duration, supervision and reporting mechanism. The work assigned should be dignified, safe and proportionate.

Victim assistance centres, witness protection programmes, counselling services and compensation mechanisms should be strengthened. These measures are essential for meaningful access to justice.

6. Regular Training Programmes to Judicial Officers

Judges require regular training on BNS interpretation, constitutional safeguards, digital evidence, sentencing principles and the relationship between BNS provisions and older IPC precedents.

7. Periodic Legislative Review

The BNS should be reviewed after a fixed period, preferably every 3 to 5 years. Parliament should examine data on arrests, convictions, acquittals, undertrial detention, use of community service, cyber-crime prosecution and misuse allegations.

5. Conclusion

The Bharatiya Nyaya Sanhita, 2023 is an important milestone in Indian criminal-law reform. Its principal strengths include the replacement of the IPC, statutory recognition of community service, greater attention to organised crime, terrorism, group violence, technology-related wrongdoing and offences affecting women and children. The BNS has the potential to modernise substantive criminal law and make it more responsive to contemporary realities. However, its performance cannot yet be described as conclusively successful. It has been in force only since July 2024, and many of its provisions are still in the early stages of police use, prosecutorial application and judicial interpretation.

The central weakness of the BNS is that legal reform has moved faster than institutional reform. Police training, forensic capacity, prosecutorial competence, judicial infrastructure, sentencing guidelines and legal awareness remain decisive factors. Further, broad provisions affecting sovereignty, national unity, terrorism and organised crime must be interpreted narrowly to prevent misuse and preserve constitutional freedoms.

The true test of the BNS will not be whether it contains more offences or harsher punishments. Its success will depend on whether it produces fairer investigations, more reliable trials, better victim support, proportionate sentencing, reduced delay and stronger protection of constitutional liberty. In that sense, the BNS is a promising but incomplete reform: it provides a new statutory foundation, but its real performance will be determined by the quality of its implementation.

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