



Necessity of New Criminal Laws in India: A Comparative Analysis

Dr. Kamal Singh Dhakad

Assistant Professor

School of Law and Legal Studies,

Sanskriti University, Mathura, U.P.

ARTICLE DETAILS

Research Paper

Keywords :

Indian Penal Code, 1860 (IPC), Code of Criminal Procedure, 1973(Cr.PC) Indian Evidence Act, 1872, Bharatiya Nyaya Sanhita, 2023(BNS), Bharatiya Nagarik Suraksha Sanhita, 2023(BNSS) and Bharatiya Sakshya Adhiniyam, 2023(BSA) etc.

ABSTRACT

Criminal law forms the backbone of any legal system, adapting to changes in society, politics, and technology. This paper examines the evolution of criminal law from traditional, often colonial, frameworks to more contemporary, rights-oriented, and technologically advanced systems. In particular, the paper compares the Indian Penal Code (1860) with the Bharatiya Nyaya Sanhita (2023), analyzing changes in philosophy, substantive and procedural law, and emerging jurisprudence. Through this comparison, the study aims to highlight the strengths and limitations of both systems and examine how legal reforms align with the principles of justice, fairness, and efficiency.

Introduction

The criminal justice system is a reflection of societal values and power structures. In many countries, especially those with colonial histories like India, criminal law has long been rooted in foreign doctrines. The Indian Penal Code (IPC), enacted in 1860 by the British, remained the core criminal statute for over 160 years. However, with the 2023 introduction of the Bharatiya Nyaya Sanhita (BNS), India attempts to overhaul its colonial legal legacy and create a modern, victim-centric, and efficient legal framework. This



shift mirrors a global trend where outdated punitive systems are being replaced or reformed to be more just and human rights-compliant. In India (IPC vs BNS), while incorporating global perspectives and theoretical underpinnings. Criminal law is one of the most vital pillars of a civilized society. It defines the boundaries of acceptable conduct, prescribes penalties for violations, and embodies the moral, cultural, and political values of the community it serves. At its core, criminal law is not merely a collection of rules but a living reflection of how a society conceptualizes justice, punishment, and social order. Over centuries, it has undergone significant transformations—shaped by changing political systems, social movements, technological developments, and philosophical debates about crime and responsibility. A comparative analysis of old and new criminal law allows us to understand the evolution of legal norms and how these laws adapt to the dynamic needs of modern societies.

In many post-colonial countries, the criminal justice framework was inherited from imperial regimes, often codified in the 19th century with the primary goal of ensuring control and order rather than justice and fairness. India is a prime example. The Indian Penal Code (IPC), drafted by Lord Thomas Babington Macaulay in 1860, remained the backbone of Indian criminal jurisprudence for over 160 years. Introduced during British colonial rule, the IPC was a comprehensive and centralized code that influenced criminal law not only in India but also in several other former British colonies, such as Pakistan, Bangladesh, and Sri Lanka.

However, over time, it became apparent that the IPC and its associated procedural (Criminal Procedure Code, 1973) and evidentiary frameworks (Indian Evidence Act, 1872) were increasingly out of sync with the needs of a free, democratic, and modern India. Critics of the IPC pointed to its colonial roots, outdated language, disproportionate focus on punishment rather than rehabilitation, and failure to account for contemporary realities like cybercrime, terrorism, digital fraud, and the rights of women and marginalized communities. The system was often characterized by long delays, cumbersome procedures, and inadequate protection for victims. Despite numerous amendments and judicial reinterpretations, the need for a comprehensive overhaul remained unmet.

Recognizing this gap, the Government of India, in 2023, introduced three landmark bills aimed at replacing these colonial-era statutes. The Bharatiya Nyaya Sanhita (BNS), 2023, was designed to replace the IPC; the Bharatiya Nagarik Suraksha Sanhita (BNSS) was introduced to supplant the Criminal Procedure Code; and the Bharatiya Sakshya Adhiniyam (BSA) aimed to substitute the Indian Evidence Act. These new legislations mark a watershed moment in Indian legal history—offering an opportunity to



critically examine the philosophical and operational differences between the old and the new criminal law systems.

The BNS introduces significant reforms that reflect a shift in how justice is perceived and delivered. Notable among these are: a clearer focus on victim rights, the inclusion of community service as a form of punishment, faster and time-bound investigation and trial mandates, use of technology for FIR registration and evidence collection, and the recognition of new-age crimes such as mob lynching and organized crime. The law also removes colonial vestiges like the offence of sedition (Section 124A of IPC), replacing it with more precisely worded provisions to protect national sovereignty without curbing dissent and free speech.

This transformation is not limited to India. Across the world, criminal justice systems are undergoing reform to reflect modern values, protect human rights, and increase efficiency. The abolition of the death penalty in many countries, the decriminalization of consensual adult behavior (e.g., homosexuality, adultery), the recognition of crimes against marginalized groups, and the incorporation of forensic science and digital tools into legal procedures, all represent a global trend. Countries such as the United Kingdom, the United States, Canada, and Australia have consistently reviewed and reformed their criminal laws to adapt to contemporary realities. In contrast, many post-colonial nations continued to function under outdated legal codes that failed to capture the socio-political transformations of the 20th and 21st centuries. Thus, a comparative study of old and new criminal laws is not only relevant but necessary. It enables us to analyze how legislative frameworks evolve with changing social needs, political ideologies, and technological advancements. It also provides a lens to examine the tensions between tradition and modernity, between retribution and rehabilitation, and between control and justice. This comparison helps evaluate whether new legal frameworks are genuinely transformative or merely cosmetic changes cloaked in the language of reform.

The present research aims to undertake a comparative analysis of the old and new criminal laws in India, primarily focusing on the Indian Penal Code (IPC) and the Bharatiya Nyaya Sanhita (BNS). However, to enhance the analytical rigor, the study will also draw on comparative insights from other jurisdictions, particularly those with similar colonial legacies or recent reforms in criminal law. The paper seeks to answer key questions: How do the old and new laws differ in their philosophical orientation? What are the substantive and procedural changes? How do these changes impact the rights of the accused and the victim? And most importantly, do these reforms mark a true departure from colonial and outdated justice models, or do they replicate some of the same challenges under a different guise?

To address these questions, this research will first trace the historical evolution of criminal law, both globally and in India. It will then explore the ideological foundations of the IPC and BNS—examining how retributive, deterrent, and rehabilitative theories of punishment are embedded in the structure and language of these codes. Subsequently, the paper will conduct a clause-by-clause comparison of selected provisions, including but not limited to offences against the state, crimes against women, property crimes, and procedural safeguards. Special attention will be paid to the removal of the sedition law, the criminalization of mob lynching, and the procedural mandates related to digital evidence and electronic trials.

In conclusion, criminal law must be a dynamic and responsive field, capable of evolving with society. The replacement of the IPC with the BNS presents a rare opportunity to build a justice system that is not only efficient and transparent but also empathetic and equitable. However, the success of such reforms will ultimately depend not just on the letter of the law, but also on its implementation, interpretation, and reception by the legal community, law enforcement, judiciary, and the public at large. A careful and critical comparison of old and new criminal laws is thus essential to understand whether India—and by extension, similar societies—are genuinely moving toward a more humane and just legal order or merely repackaging old ideas in a new format.

Hypothesis

The transition from traditional/colonial criminal codes to modern criminal law frameworks results in improved justice delivery by promoting victim rights, legal clarity, and efficiency, while reducing systemic delays and outdated doctrines.

Objectives

- To trace the evolution of criminal law from traditional to modern frameworks.
- To analyze substantive and procedural changes introduced in the Bharatiya Nyaya Sanhita.
- To compare and contrast the old and new criminal law systems in terms of legal philosophy, rights of the accused, and victim protection.
- To evaluate the effectiveness of recent legal reforms using relevant case studies.

Literature Review

Numerous scholars and legal bodies have critiqued the colonial nature of the IPC. According to Prof. K.T. Thomas, former judge of the Supreme Court of India, the IPC was "a great code for its time, but its time

has passed." Similarly, research by the Law Commission of India (Reports No. 156, 201st, and 262nd) emphasized the need for victim-centric, expeditious, and digitalized criminal processes.

Comparative studies with jurisdictions like the UK, USA, and Canada show a trend toward:

- Narrowing down the use of capital punishment.
- Enhancing due process rights.
- Introducing digital evidence protocols.
- Recognizing psychological harm and gender-based violence as distinct legal issues.

Methodology

This is a doctrinal legal research paper based on comparative analysis. The study analyzes statutes (IPC, BNS), case law, legal commentaries, law commission reports, and scholarly articles. A qualitative approach is adopted to assess the effectiveness and limitations of both old and new frameworks.

Comparative Analysis

Legal Philosophy

Criteria	Indian Penal Code (1860)	Bharatiya Nyaya Sanhita (2023)
Legal Base	Colonial, utilitarian	Indigenous, democratic

Criteria	Indian Penal Code (1860)	Bharatiya Nyaya Sanhita (2023)
Justice Model	Retributive	Reformative and restorative
Focus	State-centric	Victim-centric

Substantive Law Differences

Crime Type	IPC	BNS
Sedition (124A)	Defined & punishable	Abolished
Mob Lynching	Not explicitly defined	Defined with severe penalties
Terrorism	Not defined	Clearly defined

Community Service	Not available	Introduced for minor offenses
Rape & Consent Laws	Narrow	Expanded, includes digital consent

Procedural Reforms

Procedure Area	IPC/CrPC	BNS/BNSS
Digital Evidence	Limited	Strongly integrated
Crime Scene Videography	Not required	Mandatory for serious crimes
Trial Timelines	Not defined	Must conclude within 45 days post-trial
FIR System	Manual	Allows digital FIR registration
Appeals & Speedy Trials	Delayed	Strict timelines imposed

Rights of Victims and Accused

- **Victims:** Under BNS, victims have stronger rights to compensation, participation in proceedings, and protection.
- **Accused:** Rights such as the presumption of innocence and right to legal aid are maintained and expanded upon in BNSS.

Recent Case Studies

Tehseen S. Poonawalla vs. Union of India (2018)

This case addressed mob lynching. The Supreme Court demanded anti-lynching laws, which are now codified under the BNS (Section 103).

Monika Gandhi v. Union of India (1978)

Established that laws restricting personal liberty must be fair, just, and reasonable. The BNS integrates these principles more comprehensively.

K.M. Nanavati v. State of Maharashtra (1962)

- **Old Law Principle:** Emphasis on provocation as a mitigating factor.
- **Significance:** Highlighted the need for a jury system; led to its abolition in India.

Bhachan Singh v. State of Punjab (1980)

- Issue: Constitutionality of the death penalty.
- Shift: Established the "rarest of rare" doctrine, limiting the scope of capital punishment.

Vishaka v. State of Rajasthan (1997)

- **Reformative: Addressed workplace sexual harassment.**
- **Impact: Led to the Sexual Harassment of Women at Workplace Act, 2013.**

D.K. Basu v. State of West Bengal (1997)

- Change: Reformed police arrest and detention procedures.
- Importance: Laid down guidelines for custodial safeguards.

Shreya Singhal v. Union of India (2015)

- Modern Law: Freedom of speech in the digital age.
- Outcome: Struck down Section 66A of the IT Act for violating free speech.

Navtej Singh Johar v. Union of India (2018)

- Progressive Step: Decriminalized consensual homosexual acts.
- New Principle: Individual autonomy and dignity emphasized.

Justice K.S. Puttaswamy (Retd.) v. Union of India (2017)

- Expansion: Right to privacy recognized as a fundamental right.
- Impact on Criminal Law: Influences data protection, surveillance, and evidence.

Swapnil Tripathi v. Supreme Court of India (2018)

- Access to Justice: Allowed live-streaming of court proceedings.
- Significance: Greater transparency in criminal trials.

State v. Arjun Panditrao Khotkar (2020)

- Digital Evidence: Validated use of electronic records under Section 65B of the Evidence Act.
- Modern Relevance: Crucial for cybercrime and digital transaction cases.

Recommendations

- Training and sensitization programs for police and judiciary on new laws.

- Investment in forensic and digital infrastructure.
- Legal literacy programs for citizens.
- Continuous review of criminal laws through public consultation and expert committees.

Conclusion

The comparative analysis highlights that while the IPC was groundbreaking for its time, it no longer reflects contemporary socio-political realities. The BNS, on the other hand, introduces a dynamic, responsive, and indigenous legal framework. It aligns better with international human rights standards and ensures faster, victim-oriented justice. However, challenges such as effective implementation, judicial training, and public awareness remain critical to its success.

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