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# IPC v. BNS

## Harsh Singh Verma and Dr. Reshma Umair

*Law Student, 5<sup>th</sup> Year, B.A.LL.B. (Hons.), Amity Law School, Amity University, Lucknow*

*Assistant Professor, Amity Law School, Amity University, Lucknow*

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### ABSTRACT

*The new BNS is the embodiment of India, it represents the basic values of our eastern society and further impounds upon what could be done more to cherish it. Due to the constant marginalization and negative discrimination, in addition to the already existing hate crimes, the new law is considered to be women centric and child protective. Because it has a completely dedicated chapter #5 for the protection and preservation of the said individuals. It is also considered to be more gender neutral in approach as compared to the former IPC because of the fact that it includes the term transgender in the definition of gender and the offence of voyeurism has been made gender neutral offence. In relation to the offences against state the new law is more adamant on creating a strong concept of union while maintaining the integrity of quasi federalism in order to protect the independence of states while simultaneously preventing them from secession. Additionally, it has more of a reformative approach as compared to its predecessor, as it prescribes a new punishment of community service as well. Various other changes have been made, which to the naked eye might feel inconsequential, nonetheless, are of great relevance. The research at hand aims to dive deep into the difference and consequential changes made in the new criminal law and also tries to understand their consequence.*

### KEYWORDS

*IPC, BNS, Offence*

### RESEARCH OBJECTIVE

1. To find out the key difference between Bharatiya Nyaya Sanhita and Indian Penal Code.

2. An objective of the new criminal law.
3. Differential analysis.
4. Consequential analysis.

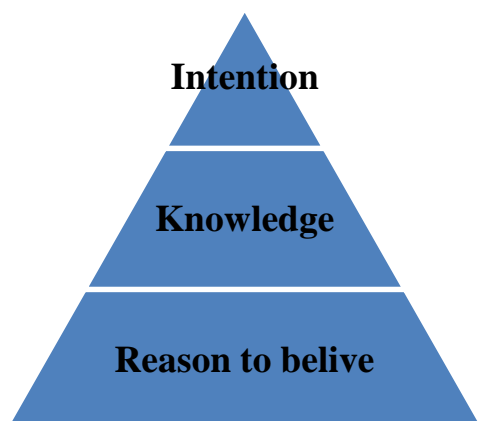
## METHODOLOGY

Secondary resources have been referred for this research article, primarily limited to textbook on Bharatiya Nyaya Sanhita 2023, nine edition by KD Gore published by LexisNexis under universal publication with the bare acts of the Indian Penal Code and Bharatiya Nyaya Sanhita 2023 majority chunk of the research is the interpretation of the statute or drawn from the book.

## GENERAL INTRODUCTION

### *Elements of crime*

1. Mens rea: guilty mind



Intention is the first and the most severe form of mental element in the element of crime  
After that comes the knowledge  
And at the lowest level of hierarchy comes the reason to believe.

Intention is defined as the mens rea through which the ultimate object could be attained 100%. It acts as the Foresight start peculiar forms of consequential act will unfold following the conduct of a individual to attain the final object. It is the most clear and unequivocal Mental element that could be present. Search element can either exist or does not there is no gray area in between.

Knowledge on the other hand means consciousness of certain repercussions, instead of clear foresight. It means awareness that certain acts might lead to object so sought but the person may not have the intention of bringing about the same.

Unlike knowledge where the individual applies there consciousness or is aware about certain plausible

consequences in reason to believe the person has sufficient cause to believe. It informs us that certain act or consequences might happen or be true but such things are remote in possibility, but never completely out of the equation.

The sub elements of mens rea that being intention, knowledge, reason to believe only purposes to become, guilty mind when they are performed voluntarily and without good faith

It is important to distinguish between such mental elements and the mental element of motive an object, In simple words we could deduce that motive is the causation or the reason because of which the act was set into motion, whereas mens rea/ guilty mind is the (means) through which the ultimate object (end) could be short to achieve.

2. Actus Reus: guilty act: The act itself is not guilty unless done with a guilty intention.
3. Legal Injury
4. Human Being<sup>1</sup>

### **THEORIES OF CRIME**

1. **Deterrent theory:** There are two fold purposes of this theory the first objective is to prevent the wrongdoer from doing an offence a second time and the second objective is to make an example of him to others that they also deter from such criminal tendencies.
2. **Preventive theory:** Preventive theory suggests that the offender is punished or disabled in totality so that there is no possibility for them to commit another offence whatsoever such preventive theory is set into motion by preventive measures such as death, exile, and by putting the offender in jail, they are prevented from committing another offence.
3. **Retributive theory:** This theory suggests that if the offender has committed a crime against another individual, then they themselves should be subjected to the same torment or offence do they have committed on their victims. The basic principle of this theory is an eye for an eye.
4. **Reformatted theory:** It suggests that punishment would be inflicted but not for the sole purpose of punishing the offender or reprimanding them; instead the main object of

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<sup>1</sup> KD Gaur, Textbook on The Bhartiya Nyaya Sanhita, 2023, (2023).

inflicting punishment on the offender under this theory is to reform them into a better human being.

5. **Multiple approach theory or next theory:** This theory suggests that instead of spearheading with one theoretical notion, the criminal justice system should implore and inculcate all the different theoretical proposed while handling criminal cases. In India, this multidimensional approach is followed, talking more specifically the deterrent theory and reformatory theory.<sup>2</sup>

### STAGES OF CRIME

1. **Intention to commit an offence:** Where intention to perform an offence is never punishable because there is no penultimate act committed that causes injury to another human being
2. **Preparation stage:** Generally speaking, when an individual prepares to commit an offence, for example, purchasing a gun, it is not punishable. Preparation before an offence is never punishable. But the exception to the general rule is waging war, breaking up harmonious relations of India with a foreign state, committing the offence of forgery or counterfeiting of coin, possessing instruments all material for counterfeiting coins, or attempting robbery or dacoity with deadly weapons.
3. **Attempt:** An attempt is an unsuccessful attack. Even though it does not accomplish the objective that it sought to achieve, still as soon as the person attempts to commit an offence, their liability would begin.
4. **Stage of Commission:** It simply means when the individual attempting to commit actually accomplishes the object that they sort to achieve, then we say that they have committed the offence in totality. In this, also the individual would be liable.<sup>3</sup>

### THE 3 NEW LAWS

The three new criminal laws that are:

1. The Bharatiya Nyaya Sanhita 2023 (BNS),<sup>4</sup>
2. The Bharatiya Nagarik Suraksha Sanhita 2023<sup>5</sup> (BNSS),

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<sup>2</sup> KD Gaur, Textbook on THE BHARATIYA NYAYA SANHITA, 2023, (2023).

<sup>3</sup> KD Gaur, Textbook on THE BHARATIYA NYAYA SANHITA, 2023, (2023).

<sup>4</sup> The Bharatiya Nyaya Sanhita, 2023, No. 45, Acts of Parliament, 2023 (India).

<sup>5</sup> The Bharatiya Nagar Suraksha Sanhita, 2023, No. 46, Acts of Parliament, 2023 (India).

### 3. The Bharatiya Sakshya Adhiniyam 2023<sup>6</sup> (BSA),

In an effort to Indianise the criminal system made by the British colonial era. The government systematically constituted a number of committees, such as the Bezbaruah committee, Vishwanathan committee, the Malimath committee, and the Madhava Menon committee. In order to reawaken the trust of the public in the criminal system, these committees took constructive criticism and feedback from the general populace and from the last students while revamping the criminal system. The department related parliamentary standing committee on Home Affairs, any text 146 report in 2010, advocated for the enactment of comprehensive new legislation instead of incremental amendments to the criminal law system.

Acting in furtherance of the report, the government in 2019 drafted the BNS. For proper creation, codification and implementation of the said criminal laws, the Legislative wing of the government consulted various dignitaries, namely, the honorable Chief Justice of India and the Chief Justice of the High Court, Bar associations and bar councils of India, and the vice chancellors of various universities. The bills were also referred to the standing parliamentary committee for scrutiny.

- The bill was introduced in parliament on 11<sup>th</sup> August 2023
- The enactment was on December 25<sup>th</sup> 2023
- The enforcement was on 1<sup>st</sup> July 2024

One of the major criticism these laws involved was, that they are not much at difference in direct comparison to their predecessors. A key thing to remember is that although the Indian criminal legal system was set up by the British and, the system was established to procure authoritative control over the Indians. But the Indians, being in tune with their resilience and intellect, turn the script and use those oppressive laws to fight for and with democracy. Another reason for the similarities between the predecessor and new laws could be that the former laws were so deeply intertwined and integrated with the Indian criminal system that uprooting them completely and establishing a new system altogether would have created confusion, chaos, disparities, and feeling of resentment between the cases already settled and the prospective cases. Therefore, it was not only a logical deduction but also necessary at the point of time to make as less changes as possible, simultaneously reclaiming the old laws under the spirit of India.

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<sup>6</sup> The Bharatiya Sakshya Adhiniyam 2023 ,2023, No. 47, Acts of Parliament, 2023 (India).

<b>Bharatiya Nyaya Sanhita</b>	<b>Indian Penal Code</b>
The BNS was enacted on December 25, 2023  And enforced on July 1, 2023.	The IPC was enacted on October 6, 1860.  and enforced on January 1, 1862.
It was spearheaded by the Ministry of Home Affairs, headed by Amit Shah  Add the parliamentary standing committee on Home Affairs, chaired by Mr. Brij Lal.	It was drafted by the First Law Commission, chaired by Thomas Babington Macaulay
As per the preamble of the Sanhita, the act aims to consolidate and amend laws and provisions that are connected to offences and incidental things	On the other hand, the preamble aimed to provide a penal Code in accordance with the territory of India, inclusive of both internal and external jurisdiction.

### **DIFFERENTIAL ANALYSIS OF THE NEW CRIMINAL LAW**

There are several significant notable changes that are incorporated in BNS:

1. Restructuring and consolidation of the code: There are 20 chapters which are comprised of 358 sections, previously in IPC there were 511 with 23 chapters.
2. Major focus on women's emancipation: A separate new chapter called chapter 5, which runs from section 63 to 99,<sup>7</sup> has been solely dedicated to protection and protective discrimination in favour of women and children, unlike the IPC. The new BNS has incorporated new offences under sections in relation to these marginalized groups, such as section 69,<sup>8</sup> which provides for a pause on making a false promise of marriage without the intention of fulfilling it. Instead of bifurcating punishment for committing the offence of gang rape on the basis of the age of the victim, now a uniform punishment has been prescribed to the

<sup>7</sup> The Bharatiya Nyaya Sanhita, 2023, §63 to 99, No. 45, Acts of Parliament, 2023 (India).

<sup>8</sup> The Bharatiya Nyaya Sanhita, 2023, §69, No. 45, Acts of Parliament, 2023 (India).

offender for committing this side offence against a woman under the age of 18 years search is provided under section 72<sup>9</sup>. The punishment is imprisonment for life or the death penalty. Sections 76 and 77, which deal with offences relating to voyeurism, have been made gender neutral. Section 366A<sup>10</sup> thereof has been expanded in the BNS section 96<sup>11</sup>.

3. Punishment for offences committed against the state: The new section 152 BNS<sup>12</sup> provides for acts of secession, which includes that nobody shall be left unpunished for committing an offense against the sovereignty, unity, and integrity of India. The scope of IPC section 124A<sup>13</sup> has been expanded under the new section in such a way that the victim party in this or the individual against whom the offence is committed is not the government anymore, but the country in Toto. New offences have also been mentioned under section 113 called terrorist acts, section 111, organised crime, and section 112, petty organized crimes.
4. Offences against the body: The definition of grievous hurt has been given in section 116 and the most significant change that has been made in it is the limitation period of 15 days, previously, it was 20 days IPC. Section 103(2) of BNS prescribes a new offence called mob lynching, it is an offence relating to cultural homicide and murder.
5. Offences against property: New offence of snatching under section 304 has been introduced. Alongside with it the scope of theft and mischief has been expanded upon.
6. Offences against lawful authority: Section 226.

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<sup>9</sup> The Bharatiya Nyaya Sanhita, 2023, §72, No. 45, Acts of Parliament, 2023 (India).

<sup>10</sup> The Indian Penal Code, 1860, § 366A, No. 45 of 1860, Acts of Parliament, 1860 (India).

<sup>11</sup> The Bharatiya Nyaya Sanhita, 2023, §96, No. 45, Acts of Parliament, 2023 (India).

<sup>12</sup> The Bharatiya Nyaya Sanhita, 2023, §152, No. 45, Acts of Parliament, 2023 (India).

<sup>13</sup> The Indian Penal Code, 1860, § 124A, No. 45 of 1860, Acts of Parliament, 1860 (India).



7. Things completely repealed: Section 377 unnatural offence<sup>14</sup>, Section 124A sedition<sup>15</sup>, Section 497 adultery<sup>16</sup>, Section 309 attempts to commit suicide.<sup>1718</sup>

### CONSEQUENTIAL ANALYSIS

1. Sedition in IPC was defined as any person who buy birds brings or tries to bring hatred or contempt or any kind of dissatisfactory feeling towards the Government of India then the offender in case shall be punished for their crime so committed, additionally and for clarification it asked the court were asked to not to prosecute an individual who was merely giving a constructive criticism which was lawful. The section solely prevented unwarranted and heinous criticism directed towards the government. This section aimed to protect the government, the sar of this section is easy to understand because of the fact that it was enforced by the British government. Therefore, to prevent any sort of upheaval or mutiny, the said government wanted to prohibit any acts or words of incitement of offence against them. But as the passage of time has walked by, there is no need to preserve the government; rather, there has been a rise in the need to preserve and protect the entirety of India. In pursuit of the in section 152, BNS<sup>19</sup> had been created to protect the endangered sovereignty integrity and unity of India . It should be noted that there is no such offence called sedition in the new law but section 152 based upon the concept of sedition and further expands its scope. For simplicity we could say that there has been a shift from Rajdroh to deshdroh. That being said the logical chronology is similar because the offence of waging war on attempting to wage war is a condition subsequent to section 152.
2. Suicide as such was no crime under IPC. It is only attempt to commit suicide that is punishable under the section 109 of IPC<sup>20</sup>. It is only when a person is unsuccessful in

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<sup>14</sup> The Indian Penal Code, 1860, § 377, No. 45 of 1860, Acts of Parliament, 1860 (India).

<sup>15</sup> The Indian Penal Code, 1860, § 124A, No. 45 of 1860, Acts of Parliament, 1860 (India).

<sup>16</sup> The Indian Penal Code, 1860, § 497, No. 45 of 1860, Acts of Parliament, 1860 (India).

<sup>17</sup> The Indian Penal Code, 1860, § 309, No. 45 of 1860, Acts of Parliament, 1860 (India).

<sup>18</sup> KD Gaur, Textbook on THE BHARATIYA NYAYA SANHITA, 2023, pages 6 to 10 (2023).

<sup>19</sup> The Bharatiya Nyaya Sanhita, 2023, §152, No. 45, Acts of Parliament, 2023 (India).

<sup>20</sup> The Indian Penal Code, 1860, § 109, No. 45 of 1860, Acts of Parliament,

committing suicide that the code is attracted. The section is based on the principle that the lives of men are not only valuable to them but also to the state which protects them. The state is under an obligation to prevent persons from taking their lives as it prevents them from taking the life of others. The essential of suicide is an intentional self destruction of life . It is well known fact that right to life parallel to right to die the state's power under section 309 IPC<sup>21</sup> to punish a man for having an attempt to commit suicide is not questioned not only on the ground of morality but also on Constitutionality. It is to be noted that suicide and Passive euthanasia are completely Different concepts . It is noted that under new BNS the said offence has been decriminalized but it is the need of the hour to not only decriminalize such a situation or plight of an individual but also facilitate them with rehabilitation.

3. The removal of section 377<sup>22</sup> from BNS, would be the most consequential, as the consensual sodomy taking place between two consenting adults is still decriminalized. But now the victims of non consensual sodomy have no statutory provision to protect them, with that women who are being subjected to marital rape are left even more vulnerable. And because of the same reasons animals are also at the risk of bestiality.
4. The offence of adultery was already decriminalized by infamous case, but because of the fact that it is not even mentioned in the new criminals law it is worth noting that, it is not an offence anymore but it should be kept in mind that it has not been completely repealed rather it has been eclipsed, adultery would still act as a ground for divorce.

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1860 (India).

<sup>21</sup> The Indian Penal Code, 1860, § 309, No. 45 of 1860, Acts of Parliament, 1860 (India).

<sup>22</sup> The Indian Penal Code, 1860, § 377, No. 45 of 1860, Acts of Parliament, 1860 (India).