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## Indian Penal Code of 1860 to Bhartiya Nyaya Sanhita of 2023 Tracing the Shift from Retributive to Reformative Jurisprudence

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### Abstract

The evolution of Indian criminal law from the Indian Penal Code of 1860 to the Bhartiya Nyaya Sanhita of 2023 reflects a huge paradigm shift. While the old code focused upon retribution and punishment that matched the severity of the crime and the pain suffered by the victim, the new law embraces the idea of reformation, aiming to help the victims, while reforming the offenders and inculcating a change in the overall society. The new law dropped the colonial impact and has added a more humanitarian and Nyaya-based Foundation for the Criminal Laws. Offenders are not treated as people who are only to be punished but as humans who can be cured and learn to give back to society. Victims are also being treated in a more friendly way so that they get regular case updates, feel heard, and their mental health issues are also taken care of instead of victim blaming. Yet certain gaps are to be fulfilled, like marital rape exceptions and a few gender-specific laws. The Indigenous knowledge of India and the concept of Dharma can guide the path of interpretation of the new Bhartiya Nyaya Sanhita, and one must read it in a way that it evolves as a tool to uphold the promise of dignity given in the Constitution. This paper attempts to create an analogy between the jurisprudence of the law and its impact. Justice must be taken as a way to flourish the society and not only a mechanism to penalise the wrongdoers. The new criminal law creates the expectation that the justice delivery system will shed off the old colonial chains and start the journey of healing. However, the success of this shift ultimately would depend upon the acceptance by society and an effective implementation, along with proactive judicial intervention and interpretation.

**Keywords:** Bhartiya Nyaya Sanhita, 2023, Jurisprudence, Retribution, Reformation, Penal.

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### Introduction

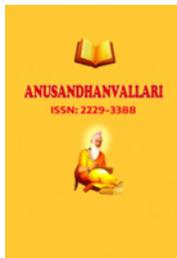
India replaced its centuries-old Indian Penal Code of 1860 with a new law, Bhartiya Nyaya Sanhita 2023, which will be effective from July 1, 2024.<sup>1</sup> The new Sanhita creates a revolution in how crimes will be handled in India, as the old law had an objective of punishment as an end goal, which was considered to be the ultimate and strict payback for the wrongs done by the offenders. It creates a bridge between justice delivery and the objective of mending the communities.<sup>2</sup> As part of the three fresh laws: The Bhartiya Nyaya Sanhita, 2023, Bhartiya Nagarik Suraksha Sanhita, 2023 and Bhartiya Sakshya Adhinyam, 2023, it tries to grow beyond the colonial while upholding and honouring the values given in the Constitution, i.e. of equality, freedom, liberty and dignity.<sup>3</sup>

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<sup>1</sup> Bharatiya Nyaya Sanhita, 2023, No. 45, Acts of Parliament, 2023 (India).

<sup>2</sup> PRS Legislative Research, The Bharatiya Nyaya Sanhita, 2023 (November 2023) 5.

<sup>3</sup> Maneka Gandhi v. Union of India (1978) 1 SCC 248, paras 11-12.



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The Indian Penal Code was established by the British, amid the fear of the revolution of 1857, with the idea to discipline the Indian society, inculcated by the Britishers, for the smooth running of the British Empire in India by stringently penalising everyone who deviates. Lord Macaulay shaped the old code to establish British control through creating fear of law by the way of prescribing harsh penalties to deter. Now, Bhartiya Nyaya Sanhita streamlines the code according to the modern needs of handling modern issues like organised gangs and mob violence, etc. Communities and victims have become a part of the justice delivery system. This paper traces the thoughtful evolution of the law from hurt for hurt to a heal and grow approach.

### **Retributivism Versus Reformation In Justice Delivery System Through Bharatiya Nyaya Sanhita**

Retributivism is based on the concept of an eye for an eye, that is, the punishment must fit the crime. The Indian Penal Code concretised the idea as section 53 gives fourteen choices of penalties from death to fines. Under Section 302, murder meant life or worse, with no room for mercy. In cases like *R v. Govinda*,<sup>4</sup> the court held that life equals the life lost. The Indian Penal Code aimed to scare and lock away, which was an idea rooted in the objective of establishing colonial control.

Reformative justice, on the other hand, sees punishment as a tool of learning. Bhartiya Nyaya Sahita brings this concept to life. Section 4(e) of the Sanhita adds the concept of community service for petty thefts under section 303 (2), wherein offenders are asked to work for society, which can result in building habits and bonds seated. In order to build trust in the justice delivery systems, victims are entitled to get updates under Section 398. A shift can be seen in the Sahita regarding the mental element, as section 84's concept of unsound mind has shifted to the new section 22, which talks about illness care as per the parameters established under the Mental Health Care Act 2017.<sup>5</sup>

This shift reflects a more humane approach instead of placing the Justice Delivery authorities above society, with no heart-to-heart connection, resulting in the fading of the trust of people in the judiciary

### **Indian Panel Code, 1860 To Bhartiya Nyaya Sanhita, 2023: A Jurisprudential Shift**

A major philosophical and jurisprudential shift from retribution to reformation has come alive in the form of Bharatiya Nyaya Sahita. The Sanhita creates a real hope for change as the objective of the punishment will not be to hurt back, and it will create a bridge between people and society by making them part of the justice delivery mechanism.

Community service is the idea that they did is imperative to rebuild the trust of people in justice delivery, and Section 4 (e) incorporates it in the Sanhita for six small wrongs like theft under ₹5000 in section 303(2) or public drunkenness under section 351.

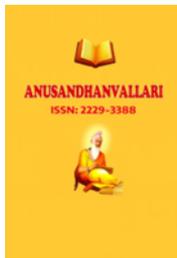
Goodness Aristotle said that good virtues grow from the repeated acts of goodness, like good habits shape a good soul.<sup>6</sup> Here, if the offenders roll up their sleeves and clean parks, start helping neighbours and do other kinds of society services, and instead of hiding behind the cold jail bars, they start warming up their ties with society, the probability of establishing good virtues ultimately can be created. This can also ease out the overstuffed prisons,

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<sup>4</sup> *R v. Govinda* (1876) ILR 1 Bom 58, 62.

<sup>5</sup> Mental Healthcare Act, 2017, No. 10, Acts of Parliament, 2017 (India), s 2(s).

<sup>6</sup> Aristotle, *Nicomachean Ethics*, Book II (W.D. Ross trans., 350 BCE).



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and if the change develops from within, it will mitigate repetitive crimes. If the judges fairly watch the execution and shield everyone equally, irrespective of their financial and social status, the Sanhita has the potential to turn mistakes into strengths beaded

Victims can also move from shadows to the core of the justice delivery system, as section 398 talks about giving steady updates to the victims on their cases. This way, the victims will feel Moore understood, and their voices will shape the fair ends to the justice. Victims will not face victim-blaming or suffer in silence.

Bhartiya Nyaya Sanhita also upholds tougher penalties in cases where the offence hurts deeply and shifts the balance of society. Section 70 now asserts the death penalty in the rarest of rare cases, including the cases of child gang rape, carrying forward the consent rule in a stringent manner. Mob lynching section 103(2) is also established and condemned by penalising it with a life term, in case of death. Section 69 upholds the trust by condemning intimacy established based on false promises. Zero First Information reports under section 173 leads to prompt actions against the crime. Incorporation of forensics in the establishment of crime is also a much-needed upgrade in contemporary times. Data management and usage of technology can also be used to create transparency, reducing victimization and to deliver justice faster by narrowing down the waiting time.

The mental state of the offenders and the victims is also taken into cognisance. Section 84 of the Indian Penal Code drew a clear distinction and upheld that a person with an unsound mind cannot be blamed, which worked as a switch on or off while ascertaining the guilt. The New Sanhita in section 22 changes that and uses mental illness as a concept derived from the Mental Health Care Act of 2017 and scrutinises the mental element to understand the true mental ability, and to derive a customised mechanism, not only to ascertain the guilt but also to design a cure and in case of victims, an effective way of counselling and rehabilitation. This helps in giving visibility to mental disabilities and to ponder upon fair questions while creating a possibility for the delinquents to reform and return to their families.

The Bhartiya Nyaya Sanhita is a manifestation of grand, deeper ideas of peace, Lok Sangha and Rashtra-hit. The classic Hegel's clash of will finds peace; the state and the wrongdoer collaborate in an honest attempt to make amends. A mutual approval creates a homogeneity with no master lording over any slave.

It is the idea of cosmic peace, propounded in the form of Rta in the Rigveda, that breathes through the new Nyaya Sanhita. The new law creates a balance between the rules instead of being blinded by rage. It is a reflection of the idea of Gandhian kindness over the cold, plain math of pain, by Bentham.<sup>7</sup> The objective is not to inculcate hurt but to carve a path to create ultimate good. Weak voices are given equal opportunity to thrive, as Amartya Sen's idea that the real strength of justice is to lift the victims from survival to full lives.<sup>8</sup> Still, there are certain tests which are yet to be passed, as the status of being married skips the idea of rape propounded under section 63 if the age of the married woman is more than 18 years. The idea enforces patriarchy, lets the power linger, hurting the trust of a married woman at home. Endangerment in the context of speech, as given under section 152, still echoes the past ideas. Gender inclusion derived from the National Legal Services Authority case still couldn't find space in the Sanhita, and the transgender community was still left out of mainstream society.<sup>9</sup>

Courts hold the key responsibility to fuse old wisdom with the new light, like in the case of Navtej Singh Johar,<sup>10</sup> where the judiciary favoured the relationship evolving out of the mutual consent of two adults and restricted from

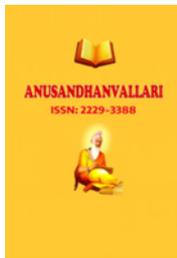
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<sup>7</sup> John Braithwaite, *Crime, Shame and Reintegration* (Cambridge University Press 1989) 55.

<sup>8</sup> Amartya Sen, *The Idea of Justice* (Allen Lane 2009) 231.

<sup>9</sup> *National Legal Services Authority v. Union of India* (2014) 5 SCC 438, para 59.

<sup>10</sup> *Navtej Singh Johar v. Union of India* (2018) 10 SCC 1; *Joseph Shine v. Union of India* (2018) 2 SCC 189.



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doing any sort of moral policing. In the form of Bhatiya Nyaya Sanhita, the Indian criminal justice system has stepped up from watchtowers to a harmonised institution of open balance. Wise judicial rulings breathe life into this system by lighting clear paths using the heart to seal the deeds instead of paper rules.

### **Retributivism Vis-À-Vis The Indian Penal Code, 1860**

The Indian Penal Code of 1860 was built based on retribution, creating a deep sense of the idea that every wrong must meet an exact payback. The law is not morality and hence cannot have multiple interpretations or considerations, and can never bend. The code felt unbreakable as the duties and prohibitions were carved concretely, with no possibility of flexibility. It echoed Immanuel Kant's well-established rule: punish to restore the balance, hurt for hurt, because humanity needs the establishment of counterbalances and fairness deep down.<sup>11</sup> Based on this idea, even the small thefts were punished seriously in the court by fines or jails, turning every minor deviation into pain and leaving, in the majority, if not all cases, the offenders to be hardened as criminals, diminishing the chances of reformations or return.

The code of 1860 was introduced by the British colonial government to consolidate imperial control and establish a strict uniform system of criminal justice in India. Before the Code, the criminal law in India was pluralistic and fragmented, governed by a mix of personal laws and customary practices along with a few ad hoc regulations of the East India Company. This diversity was viewed as Britishers as inconsistent and not fit to effectively control colonial administration, and hence IPC was designed as a codified comprehensive criminal law applicable uniformly across the entire British India.<sup>12</sup>

Thomas Babington Macaulay, who chaired the First Law Commission in 1834, had a deep jurisprudential vision influenced by the English common law, utilitarianism of Bentham and Enlightenment rationalism. He designed the IPC on the underlying philosophy of utilitarianism and conceived the code to be an instrument to uphold the social order without any reflection of the moral or religious values of India. The state defined the norms, and every violation of these state-defined norms was established as a crime for which punishment was justified on the grounds of deterrence and prevention rather than the idea of retribution or moral correction.<sup>13</sup>

The jurisprudential exegesis of the IPC reflects traces of legal positivism as the law was viewed as a command of the sovereign, codified and enforceable through the state authorities. The code deliberately ignored moral abstractions and strategically emphasised precise definitions and classification of offences along with the prescription of standardised punishments. The concepts like actus reus, knowledge, Mens Rea, intention, negligence, and strict liability, etc., were carefully codified to reflect a systematic and rational approach to various kinds of criminal liabilities. The emphasis on certainty straitjacket codification was intended to restrict judicial discretion and to reduce arbitrariness in the process of criminal adjudication.

IPC was not a mere transplantation of British criminal law in India. It was adapted by Macaulay to the specific Indian conditions, incorporating graded punishments to make the law more retributive and ensure effective control of the Britishers in India. The code was a profound product, rooted in utilitarianism and legal positivism, ensuring

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<sup>11</sup> Immanuel Kant, *The Metaphysics of Morals* (Mary Gregor trans., Cambridge University Press 1996) 104-05.

<sup>12</sup> B. Shiva Rao, *The Framing of India's Constitution: Select Documents*, Vol. II (Indian Institute of Public Administration, New Delhi, 1967) 45-47.

<sup>13</sup> Thomas Babington Macaulay, *Report on the Indian Penal Code* (Law Commission of India, 1834).



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retribution with clarity. The prolonged use of the code after independence in India reflects its technical robustness and the deep influence of Western jurisprudence on Indian criminal law.

Even after independence became an instrument of control rather than care. Retribution and deterrence dominated the conceptualisation of penalties, and incarceration became a standard response to deviance. Sedition under section 124A of IPC was introduced in 1870 and criminalised various forms of disaffection against the colonial state, curtailing the political speeches even after Independence. However, its scope was curtailed in the case of *Kedarnath Singh v. State of Bihar*.<sup>14</sup> The limitation of such a punishment-centric framework is reflected in the fact that overcrowding of prisons and increasing rates of recidivism were witnessed, along with the absence of any mechanism for rehabilitation or restoration. The code ignored reconciliation victim participation reinforcement and reintegration as a model of justice.

Dr Ambedkar also recognised the administrative value of codification but repeatedly emphasised the constitutional morality and human dignity over excessive reliance on punishment or Danda.

### **The Paradigm Shift: From Danda To Nyaya**

The colonial mindset to assert control through codes like the Indian Penal Code faded away with the national voices. Jurists like Frantz Fanon called such laws instruments to control, based upon the idea of built-in violence, causing a split between the masters and the rest of the population, wherein natives were painted as the wild ones who were to be lashed upon. It kept the colonial boundaries intact with law as a tool to hold the power, taming the voices of question.<sup>15</sup>

After independence, when Dr Bihar Ambedkar spoke in the Constituent Assembly, he called the Indian Penal Code a code for British rulers and not for free Indians as the code clashed with the Indian idea of Dharmik justice, Buddhist kindness and the dream of Mr Gandhi to lift all together. He asserted that in an independent India, there was no room for the endless cycle of hate, as the new independent India would be carved, with the idea of Sarvodaya, good for everyone, without any prolonged grudges.<sup>16</sup>

The Indigenous wisdom of the Rigveda also propounds the idea of upholding harmony above grudges and says let all walk free from sin and let peace bind us all.<sup>17</sup> It was not the idea of Romans that needed “eye for eye”, but the Indian norm of “hate the crime, but not the criminal”, which was pushed by Dr. Ambedkar and resulted in inculcating dignity into the ambit of Article 21; Life with worth, not just breathe under pain.<sup>18</sup> This concern also resonates with Mahatma Gandhi's Hind-Swaraj, where he openly criticised the blind imitation of Western models and stressed self-rule, grounded in the morality of self-discipline rather than a coercive penalising authority for every deviation.<sup>19</sup>

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<sup>14</sup> *Kedarnath Singh v. State of Bihar*, AIR 1962 SC 955; (1962) Supp (2) SCR 769.

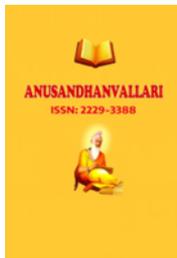
<sup>15</sup> Frantz Fanon, *The Wretched of the Earth* (Richard Philcox trans., Grove Press 2004) 3-16.

<sup>16</sup> *Constituent Assembly Debates*, Vol VII (16 November 1948) 966 (Dr. B.R. Ambedkar); M.K. Gandhi, *Hind Swaraj* (1909) ch 13; Rigveda 10.191.4 (Ralph T.H. Griffith trans., 1896).

<sup>17</sup> *Rigveda* 10.191.4 (Ralph T.H. Griffith tr., 2nd edn., E.J. Lazarus & Co., Benares, 1896).

<sup>18</sup> *Constituent Assembly Debates*, Vol. VII (16 November 1948) 966 (Dr. B.R. Ambedkar).

<sup>19</sup> M.K. Gandhi, *Hind Swaraj* (Navajivan Publishing House, Ahmedabad, 1938) ch 13.



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Professor Baxi later called for human rights beyond and above Macaulay's ghost, blending global care with the beauty of the local heart.<sup>20</sup>

### **The Bhartiya Nyaya Sanhita, 2023: A Reformatory Orientation**

The new Bhartiya Nyaya Sanhita 2023 marks a significant jurisprudential shift from a retributive colonial criminal law towards a reformatory and victim-oriented model of criminal justice law. Unlike its predecessor, the Indian Penal Code 1860, it reflects contemporary constitutional values of proportionality, dignity, and social reintegration instead of colonial control and Utilitarian deterrence. The emphasis in the new law is not only on punishments and creation of fear of law but on correction, accountability, restoration of social harmony and development of a sense of respect for the rule of law.<sup>21</sup>

Rationalisation of punishment is a key reformatory feature of the new Sanhita, as for several offences, it now provides for graded sentencing, which enables the courts to customise the punishments based upon factors like the gravity of harm, intention, surrounding circumstances and the mental element. The lawmakers recognised that the uniform punishment often produces unjust outcomes and undermines the prospects of rehabilitation of the offenders, and the new Sanhita is designed to reduce excessive criminalisation by removing obsolete offences and by streamlining the vague provisions to limit unnecessary incarceration and its criminogenic effects.<sup>22</sup>

Another reformatory element is the enhanced focus on community based connective sanctions by providing the community service option as a form of punishment for certain offences, deviating from the traditional dominance of custody-based punishment. Such measures are pre-empted to instil social responsibility in the offenders, bypassing the disruptive consequences of incarceration, particularly in the case of first-time or minor offenders. The modern phonological thought also aligns with the idea that imprisonment must be used as a last resort rather than the normative response.<sup>23</sup>

The Sanhita also reflects reformatory ideology in its victim-centric provisions, as an enhanced emphasis is laid upon speedy investigations and victim compensation. This acknowledges the harm suffered by the victims and the traumatisation they go through, and further seeks to restore confidence of the victims in the justice delivery system. It attempts to harmonise the competing interests of the victim and the offender by creating an effective mechanism for victim redressal while working on the reformatory measures for the offenders, moving beyond the state-centric model of punishment.<sup>24</sup>

The BNS also restructures the offences against women and children, which demonstrates a reformatory intention of the legislation not only towards the offenders but also towards society at large. This clearly defines offences, enhances the procedural safeguards and strengthens the accountability in order to inculcate behavioural changes and deterrence through certainty rather than severity. The changes reflect a consideration that a sustainable crime control mechanism depends upon overall social transformation and not merely on harsh penalties.

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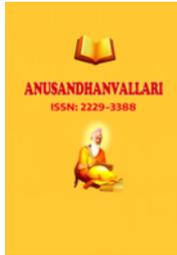
<sup>20</sup> Upendra Baxi, 'Constitutionalism as a Site of State Formative Practices' (2000) 21 *Cardozo Law Review* 1183.

<sup>21</sup> K.N. Chandrasekharan Pillai, *Rethinking Criminal Law* (Eastern Book Company 2019).

<sup>22</sup> Law Commission of India, *Report No. 268: Amendments to Criminal Law* (2017).

<sup>23</sup> Government of India, *Statement of Objects and Reasons, Bharatiya Nyaya Sanhita Bill, 2023*.

<sup>24</sup> Justice Malimath Committee Report on Reforms of Criminal Justice System (Ministry of Home Affairs 2003).



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In essence, the Sanhita of 2023 is a conscious and strategic attempt to recalibrate the criminal justice jurisprudence of India. It retains deterrence as an unnecessary element but is mainly based upon the philosophy of reformation, reinforcing constitutional morality by correcting the offenders and restoring the victims.

### Conclusion

The Bhartiya Nyaya Sanhita, 2023, signifies more than a formal replacement of the Indian Penal Code, 1860 and reflects an evolving constitution and penological consciousness within the criminal jurisprudence of India. A conscious move away from the rigid retributive colonial framework, the Sanhita aspires to inculcate reformatory justice at the core of the Indian criminal law. It emphasises proportionality in the penalties, while rationalising offences and recognising the non-custodial sanctions. This shift acknowledges that crime is often rooted in the economic, psychological, and social factors rather than in superficial moral deviance.

The BNS also attempts to balance the reform of the offenders with a victim-centric approach towards justice. It strengthens the provisions related to victim compensation and also creates procedural efficiency and upholds the mandate of protection of vulnerable groups. The law seeks to restore faith in the criminal justice system of India as mechanism of fairness and not fear.

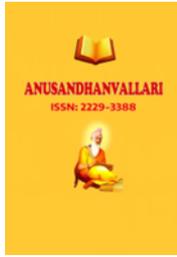
This multidimensional focus reflects a mature legal philosophy related to punishment and upholds not only a way to censor the wrongdoing but also a facilitator of healing, both for the individuals involved and for the society at large.

However, the promise of transformation, assured by the BNS, cannot be realised only through the legal reforms. A reformatory statute of this kind demands a reformatory ecosystem supported by sensitive judicial interpretations, effective corrective institutions, trained law enforcement agencies and a societal willingness to accept and implement the law not only in letter but in spirit. Without this supportive mechanism, even the most progressive legal framework can have poor implementations and can generate deficiencies.

The Bhartiya Sahib stands as a great opportunity rather than a conclusion. It is an invitation to reimagine harmony between the criminal justice system of India and the inherent constitutional values of equality, justice, and dignity. The success of this shift will ultimately depend upon the acceptance by society, institutional capacity, consistency in the implementation and correct judicial interpretations.

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