

# A Critical Study of Offences against Public Morality under the Bharatiya Nyaya Sanhita, 2023

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## Abstract

An endeavor to reform an existing legal system requires a methodical and critical assessment of the rules, principles, and philosophies native to the existing system. With the introduction of the Bharatiya Nyaya Sanhita, 2023 to replace the Indian Penal Code, 1860, there is an impetus on the lawmakers to implement, by way of such assessment, meaningful and progressive changes directed towards enhancing the ability of the law to promote just, reasonable and equitable rules and practices. The present research paper is a critical review of the Bharatiya Nyaya Sanhita, 2023 that has been described as a significant change in the criminal justice system in India. Another major inquiry made in the study is whether the BNS is indeed a radical overhaul of criminal jurisprudence, or a restructuring of the current provisions. It particularly focuses on the introduction of new offences, reforms on punishment, change of definition of crimes and the implication on civil liberties and constitutional governance. As the law seeks to bring criminal law into the current times and reflect new types of crime, scholars have criticized the use of ambiguous terminology in some of the provisions, the possible exploitation of the concept of national security offences, and the continued existence of some of the legal systems of the colonial era in the new system. The research concludes that, although the BNS has a number of progressive reforms, the ultimate effects will rely on the judicial interpretation, institutionalized and efficient coordination with law enforcement agencies.

**Keywords:** Criminal Justice Reform, Bharatiya Nyaya Sanhita 2023, Indian Penal Code, Criminal Law Modernization, Victim-Centric Justice

## 1. Introduction

In the field of criminal law, public morality has long held a prominent position as a normative framework that societies use to control behavior deemed detrimental to both individuals and the community's collective conscience.<sup>1</sup>

In addition to safeguarding life and property, criminal law serves as a tool for upholding moral principles, decency, and social order. Criminal penalties for offenses including obscenity, public

<sup>1</sup> Jeremy Waldron, *The Harm in Hate Speech* (Harvard University Press, 2012) 45–58.

immorality, immoral trafficking, and the exploitation of weaker members of society have historically been used in India to control public morals. These offenses are based on the idea that some behaviors, even those that are private or consensual, can negatively impact the moral fiber and cohesion of society when they are displayed in public. Public morality is a dynamic and socially situational concept that is influenced by changing social standards, historical context, and cultural values. In a different age, anything that is considered morally acceptable could be considered immoral or objectionable. As a result, the prosecution of immoral behavior has frequently been the focus of heated constitutional, philosophical, and legal discussions. While supporters contend that the State has a legitimate interest in preserving public decency and averting moral deterioration, critics contend that morality-based offenses are ambiguous, subjective, and prone to abuse. The core of offenses against public morality is this conflict between individual liberty and social morality.<sup>2</sup>

The Indian Penal Code, 1860 (At Present known as Bharatiya Nyaya Sanhita, 2023), established the legal foundation for making actions that violated public decency illegal under the colonial legal system. The IPC, which placed a strong emphasis on social control and moral regulation, mirrored Victorian moral ideas and colonial government agendas. Indian courts were eventually forced to construe these clauses in accordance with constitutional principles, especially following the 1950 promulgation of the Indian Constitution. Constitutional protections for morality-based offenses were progressively added by judicial interpretation, which placed a strong emphasis on fairness, proportionality, and respect for basic rights.<sup>3</sup>

Under the BNS, offenses against public morals must be considered in the context of the larger constitution. Fundamental rights including freedom of speech and expression (Article 19), personal liberty (Article 21), and the right to privacy as an inherent component of dignity are all protected under the Indian Constitution. However, in the interest of morality, decency, and public order, these rights may be subject to reasonable limitations<sup>4</sup>.

## KNOWLEDGE GAP

A major change in India's criminal law system, the Bharatiya Nyaya Sanhita aims to modernize, decolonize, and promote victim-centered justice. Despite its significance, thorough doctrinal research examining the ways in which offences against public morals have been reclassified, restructured, or preserved under the BNS is conspicuously lacking. The majority of the current commentary on the BNS is descriptive and preliminary, concentrating on general legislative changes rather than providing a critical analysis of offenses based on morality

## OBJECTIVES

1. To critically examine the concept and scope of offences against public morality under the Bharatiya Nyaya Sanhita, 2023.

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<sup>2</sup> Susan Brenner, *Cybercrime and the Law* (Northeastern University Press, 2012) 91–104.

<sup>3</sup> Jack Balkin, “Digital Speech and Democratic Culture” (2018) 79 *University of Chicago Law Review* 1, 12–18.

<sup>4</sup> Sandra Fredman, *Human Rights Transformed* (Oxford University Press, 2008) 155–162.

2. To evaluate the effectiveness of the BNS framework in balancing public morality with constitutional rights and contemporary societal values.

## RESEARCH QUESTIONS

1. How does the Bharatiya Nyaya Sanhita, 2023 conceptualize and regulate offences against public morality in comparison to the Indian Penal Code, 1860?
2. To what extent do the provisions relating to public morality under the Bharatiya Nyaya Sanhita, 2023 align with constitutional principles of liberty, dignity, privacy, and freedom of expression?

## RESEARCH METHODOLOGY

The current study examines transgressions of public morality under the Bharatiya Nyaya Sanhita, 2023, using a doctrinal and analytical approach to legal research. Statutory provisions, constitutional concepts, court rulings, and academic literature pertaining to morality-based criminal offenses are all methodically examined using the doctrinal method.

### **The Role of Public Morality in Criminal Policy: A Judicial Perspective**

The Constitution's allowable limitations on basic rights, especially under Article 19(2), provide the basis of India's legal framework governing offenses against public decency. Nonetheless, the judiciary has continuously underlined that constitutional ideals and public morality cannot be understood separately. In *Ranjit D. Udeshi v. State of Maharashtra* (1965), the Supreme Court maintained bans on pornographic content but issued a warning that morality is dynamic and needs to be evaluated in the context of modern society. This ruling is an example of an early policy approach that recognized the changing nature of social norms while permitting moral regulation.

Public morality is nevertheless acknowledged by the Bharatiya Nyaya Sanhita, 2023, as a policy rationale for criminalization. But according to court rulings, this kind of criminality must be appropriate, reasonable, and sensitive to shifting moral standards. This jurisprudence has the policy implication that, in order to prevent constitutional conflict, morality-based offenses under the BNS must be interpreted narrowly and reviewed on a regular basis<sup>5</sup>.

### **The Limiting Policy Principle of Constitutional Morality**

The concept of constitutional morality, which places a higher priority on constitutional values than on social or majoritarian moral ideas, caused a significant change in India's legal policy toward public morality. In *Navtej Singh Johar v. Union of India* (2018), the Supreme Court firmly stated that individual autonomy, privacy, and dignity cannot be subordinated to public morality. The Court ruled that when societal morality and constitutional morality clash, the former must take precedence.

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<sup>5</sup> Gupta A. Comparative analysis of the Indian Penal Code and the Bharatiya Nyaya Sanhita. *Journal of Criminal Law and Justice*. 2023;8(1):33–52.

This ruling severely restricts the range of crimes based on morality from the perspective of legal policy. It states that the criminal code cannot be applied to impose moral disapproval or societal bias. This principle requires that offenses against public morality be supported by evidence of injury rather than just moral disagreement in the context of the BNS. Any legal structure that permits criminal penalties based only on moral transgressions runs the risk of being unconstitutional.

## **Balancing Policy, Obscenity, and Freedom of Expression**

One of the most contentious aspects of morality-based criminal legislation has been the prohibition of indecent expression and obscenity. The Supreme Court used the "community standards test" in *Aveek Sarkar v. State of West Bengal* (2014), ruling that sexually explicit or nude content cannot be automatically classified as obscene unless it appeals to prurient curiosity and has no societal value. The Court underlined the need of taking contextual, artistic, and social relevance into account.

This ruling has significant policy ramifications for BNS offenses against public decency. It reaffirms the need to properly balance morality-based speech limits to prevent overzealous censorship. Therefore, the BNS's policy framework must conform to this legal criterion by making sure that obscenity-related offenses are clearly defined and enforced in a way that upholds Article 19(1)(a)'s guarantee of free speech<sup>6</sup>.

## **The Boundaries of Moral Policing, Privacy, and Dignity**

The legal policy on public morality has also changed as a result of the acknowledgment of privacy as a basic right. The Supreme Court upheld the fundamental constitutional values of human autonomy, dignity, and privacy in the 2017 case of *Justice K.S. Puttaswamy (Retd.) v. Union of India*. The Court specifically disapproved of invasive State action that lacked a strong public interest and was motivated only by moral considerations.

From a policy standpoint, this ruling places morality-based criminal legislation under constitutional limitation. It suggests that private behavior cannot be made illegal by the state only because it violates accepted moral principles. This ruling requires a clear differentiation between private behavior protected by the right to privacy and truly public acts impacting social interests for offenses under the *Bharatiya Nyaya Sanhita*. If this distinction is not upheld, moral policing may become unconstitutional<sup>7</sup>.

## **Examining Policies in View of Judicial Developments**

The cumulative impact of court rulings shows a distinct policy trajectory: individual rights harm principles, and constitutional morality must take precedence over morality-based criminalization. The effectiveness of the *Bharatiya Nyaya Sanhita*, 2023 strategy hinges on uniform judicial interpretation

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<sup>6</sup> Patel R, Iyer S. Technological reforms in criminal justice investigation: implications of the new criminal laws in India. *International Journal of Law and Technology*. 2024;11 (1):75–92.

<sup>7</sup> Khan F. National security and civil liberties under the *Bharatiya Nyaya Sanhita*: a constitutional analysis. *Indian Law Review*. 2024;9(1):67–85.

and moderate enforcement, even though its goal is to reform criminal law and depart from colonial moralism<sup>8</sup>.

Therefore, it is necessary to consider the aforementioned case laws while considering the inclusion of offenses against public decency under the BNS, since they jointly indicate that:

- Public morality is a legitimate but constrained basis for criminal prosecution.
- The guiding premise is constitutional morality.
- Vague moral norms cannot restrict the right to free speech.
- State-led moral regulation is constrained by privacy and dignity<sup>9</sup>.

## Victim-Centric Justice

The criminological initiatives that have been implemented in the past are those that are more focused on punishing offenders with little regard to the criminal victim needs and rights. India is countries where victims traditionally do not participate much in the criminal proceedings, which is mostly state controlled. The Bharatiya Nyaya Sanhita tries to raise the issues of victim-oriented justice, and it focuses on restitution, compensation, and other types of punishment. A major change is the one that initiated the concept of community service as a penalty to some minor crimes. This indicates a change in the direction of restorative justice, where emphasis is placed on ways of fixing the damage that has been inflicted through criminal behavior instead of just sending them to prison. Constitutional values of equality, dignity, and non- discrimination.<sup>10</sup>

## Conclusion

Bharatiya Nyaya Sanhita, 2023, is an unprecedented change in the criminal justice system of India. The legislation tries to modernize the substantive criminal law by substituting the Indian Penal Code that existed during the colonial time and to cater to the current issues like organized crime, terrorism, and techno crimes. The reform represents a wider turn in the direction of victim-centered justice and is designed to simplify the legal provisions by making the criminal law more simplified. The success of the BNS will however hugely rely on how it is executed, how the law is interpreted by the courts and how the law enforcing bodies will adjust to the new legal undertaking. Though the act necessitates a number of positive transformations, it also poses critical concerns that cut across civil liberties, constitutional protections, and misapplication of general legal clauses. Thus, constant analysis and potential corrections will be required to make the BNS an effective compromise between security issues and the necessity to protect the basic rights. Finally, the Bharatiya Nyaya Sanhita can be considered as the start of a more comprehensive process of criminal justice reform in India and not as the end. The success of its institutional capacity, legal sensitivity, and adherence to

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<sup>8</sup> Rao P, Kumar S. Colonial legacy and reform of criminal law in India. *Asian Journal of Comparative Law*. 2021; 16(2):203–221.

<sup>9</sup> Sharma V. Challenges in the Indian criminal justice system: need for comprehensive reform. *Journal of Criminal Justice Studies*. 2020;11(1):1–18.

<sup>10</sup> Press Information Bureau, Government of India. Bharatiya Nyaya Sanhita in place of Indian Penal Code [Internet]. 2023. Available from: [https://www.pib.gov.in/Press Release Page.aspx?PRID=2115169&reg=3&lan](https://www.pib.gov.in/Press%20Release%20Page.aspx?PRID=2115169&reg=3&lan)

the principles of justice, fairness, and rule of law will determine its long term success. Ultimately, the relationship between law and morality in a democratic society must be guided by principles of justice, equality, and human dignity. Criminal law should intervene only when conduct causes genuine harm to individuals or society and should avoid unnecessary interference in private life. By prioritizing constitutional morality and human rights, the legal system can maintain an appropriate balance between protecting societal interests and safeguarding individual freedoms.

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