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Legal Framework of Criminal Law in India: Constitutional Provisions, the Bharatiya Nyaya Sanhita, 2023, and the Judicial Approach

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Abstract

India's criminal justice system is presently undergoing a foundational statutory transition with the replacement of the Indian Penal Code, 1860, by the Bharatiya Nyaya Sanhita, 2023 (BNS). This transition cannot be adequately understood as a mere legislative renaming or consolidation exercise; rather, it must be analyzed through the constitutional architecture that structures criminalization, punishment, police power, adjudication, and judicial review. This paper offers a doctrinal and jurisprudential account of the Indian legal framework governing criminal law by integrating three interlocking dimensions: constitutional provisions that impose substantive and procedural constraints on state power, the substantive criminal law reforms and continuities embodied in the BNS, and the judicial approach historically developed through constitutional adjudication—that is likely to guide interpretation, application, and potential invalidation of provisions under the new regime. Particular attention is devoted to the BNS's reconfiguration of offences against the State, the introduction of “community service” as a statutory punishment, and the codification of offences such as organised crime and terrorist acts. The paper argues that the constitutionality and legitimacy of the BNS will turn less on formal replacement of colonial-era codes and more on the judiciary's continued commitment to legality, proportionality, non-arbitrariness, fair trial guarantees, and free speech protections under Articles 14, 19, 20, 21, and 22 of the Constitution of India.

Keywords: *Constitution of India; criminal law; Bharatiya Nyaya Sanhita; legality principle; proportionality; sedition; judicial review; organised crime; terrorism; fair trial.*

Introduction

The contemporary structure of Indian criminal law is simultaneously statutory and constitutional. Statutes create offences, prescribe punishments, define defences, and allocate investigative and prosecutorial authority. Yet constitutional guarantees supply the normative and enforceable limits within which the criminal law must operate. In a constitutional democracy, criminal law is not simply a technique of governance; it is a field in which the State's coercive authority confronts individual liberty, dignity, equality, and expressive freedom (Constitution of India, 1950, arts. 14, 19, 20–22). Accordingly, any legislative redesign of the criminal code must be studied not only for what it prohibits but also for how it interacts with constitutional rights and with the interpretive traditions developed by courts.

The BNS is the central statute now governing substantive criminal offences in India. The official legislative record reflects that the BNS is Act No. 45 of 2023, enacted on December 25, 2023, and brought into force on July 1, 2024. The BNS is part of a coordinated legislative package that also includes the *Bharatiya Nagarik Suraksha Sanhita, 2023* (BNSS), and the *Bharatiya Sakshya Adhiniyam, 2023* (BSA), which replace the Code of Criminal Procedure, 1973, and the Indian Evidence Act, 1872, respectively. While this paper's principal emphasis remains the BNS, constitutional analysis requires attention to how substantive offences, procedure, and evidentiary rules function as an integrated system, particularly when courts assess the fairness of criminal trials and the constitutionality of investigative practices.

This paper pursues three research objectives. It seeks to articulate the constitutional provisions that structure criminal law-making and criminal process; to examine the BNS's key continuities and innovations, especially those with high constitutional salience; and to explain the judicial approach that is likely to govern the interpretation and review of BNS provisions, including the early litigation context emerging around certain offences (e.g., the new offence relating to acts endangering the sovereignty, unity, and integrity of India).

Methodology and Analytical Framework

This paper is based on doctrinal legal research. Primary sources include the Constitution of India, the text of the BNS, and leading judicial decisions of the Supreme Court of India and High Courts that shape constitutional criminal procedure and the substantive limits of criminalization. The analysis is interpretive and normative: interpretive in the sense that it examines how statutory text and constitutional provisions are likely to be read together, and normative in the sense that it evaluates whether statutory choices align with constitutional requirements such as non-arbitrariness, proportionality, and fairness

(Constitution of India, 1950, arts. 14, 19, 21; *Maneka Gandhi v. Union of India*, 1978). Secondary materials, including legislative briefs and public institutional statements, are used to situate the BNS within broader reform discourse (PRS Legislative Research, 2023).

The analytical framework treats constitutional provisions as the higher-order constraints on criminal law. The BNS is therefore evaluated not merely as a replacement for the IPC but as a statute whose validity and operability will be mediated by constitutional adjudication. This approach is consistent with India's tradition of "constitutionalization" of criminal process through judicial interpretation of Article 21 and allied provisions (*D.K. Basu v. State of West Bengal*, 1997; *Maneka Gandhi v. Union of India*, 1978).

Constitutional Foundations of Indian Criminal Law

Criminal Law Under the Constitution: Rights as Constraints on Coercion

Indian criminal law operates within the constitutional commitment to limited government. Several provisions operate as direct or indirect constraints on criminalization, policing, prosecution, and punishment. Articles 14, 19, 20, 21, and 22 constitute the core rights architecture relevant to criminal justice (Constitution of India, 1950). Article 32 and Article 226 additionally supply remedial jurisdiction enabling courts to correct illegal detention, procedural violations, and unconstitutional criminal statutes (Constitution of India, 1950, arts. 32, 226).

The constitutional position can be expressed as follows: while the legislature may define offences and punishments, criminal law must remain consistent with equality (Article 14), permissible restrictions on freedoms (Article 19), legality and protection against retrospective criminalization (Article 20(1)), protection against double jeopardy (Article 20(2)), protection against compelled self-incrimination (Article 20(3)), and the due process and dignity requirements of Article 21, read with procedural safeguards in Article 22 (Constitution of India, 1950; *Selvi v. State of Karnataka*, 2010).

The *Bharatiya Nyaya Sanhita, 2023*: Statutory Architecture and Reform Claims

Legislative Status, Enforcement, and Systemic Context

The BNS is designated as Act No. 45 of 2023 and entered into force on July 1, 2024. The Government has publicly stated that the new criminal laws, including the BNS, BNSS, and BSA, were notified on December 25, 2023, and brought into force from July 1, 2024, with certain specified exceptions for particular provisions. The BNS replaces the IPC as the central substantive criminal code (PRS Legislative Research, 2023).

Although the BNS is the primary substantive code, it is practically inseparable from the BNSS and BSA in implementation. The BNSS introduces procedural redesigns that can alter how BNS offences are investigated and tried, including the increasing emphasis on audio-video electronic recording for certain investigative acts. For example, Section 105 of

the BNSS mandates audio-video recording of searches and seizures and the forwarding of such recordings to a magistrate. This matters constitutionally because procedural transparency can strengthen judicial oversight and due process compliance, even when substantive offences remain broad

Table 1: Constitutional Provisions and Their Criminal Justice Implications

Constitutional Provision	Doctrinal Content Developed by Courts	Relevance for Substantive Criminal Law and the BNS
Article 14	Equality, non-arbitrariness, rational classification; increasing use of arbitrariness review	Requires offences and punishments to be non-arbitrary; constrains vague or overbroad criminalization; informs proportional sentencing and non-discriminatory enforcement
Article 19(1)(a) with Article 19(2)	Protection of speech and expression; restrictions must fit within enumerated grounds and satisfy constitutional tests	Central to evaluating offences against the State and speech-related crimes; frames scrutiny of BNS provisions affecting expression, including Section 152 controversies
Article 20(1)	No ex post facto criminal laws; legality principle	Requires prospective operation of offences and punishments; constrains retrospective application during statutory transition from IPC to BNS
Article 20(2)	Protection against double jeopardy	Relevant where multiple statutes overlap; constrains repeated prosecutions for substantially same offence
Article 20(3)	Protection against compelled self-incrimination	Shapes interrogation and evidentiary use of compelled statements; affects policing and trial practice
Article 21	“Procedure established by law” interpreted to require fairness, reasonableness, non-arbitrariness; due process orientation after Maneka Gandhi	Governs arrest, detention, bail, trial fairness, sentencing proportionality, prison conditions; indirectly constrains overbroad offences through constitutional reasonableness
Article 22	Safeguards relating to arrest and detention	Requires adherence to arrest safeguards; supports judicial control over remand and custody

Note. The table reflects constitutional interpretation through major Supreme Court decisions, including *Maneka Gandhi v. Union of India* (1978), *D.K. Basu v. State of West Bengal* (1997), and *Selvi v. State of Karnataka* (2010).

Continuity and Change: A Realist Reading of Codification

Legislative replacement does not necessarily imply substantive transformation. A significant portion of the BNS retains offences and doctrinal structures inherited from the IPC, including familiar categories such as offences affecting the human body, offences against property, and offences against public tranquility (PRS Legislative Research, 2023). Continuity can promote legal certainty during transition but may also reproduce older conceptual problems such as outdated drafting, overlapping special statutes, and speech-related overbreadth.

At the same time, the BNS introduces new categories and modifies institutional priorities. It explicitly includes “community service” within the statutory list of punishments, alongside death, life imprisonment, imprisonment, forfeiture, and fine. The text of Section 4 of the BNS includes “Community Service” as a punishment. This is symbolically significant because it suggests a partial shift from exclusively carceral punishment toward sanction pluralism, with potential restorative implications.

Constitutionally Salient Provisions and Innovations in the BNS

Community Service as Punishment: Proportionality and the Architecture of Sentencing

The introduction of community service as a punishment in Section 4 marks a notable statutory development. From a constitutional standpoint, this

development invites analysis under Articles 14 and 21. Article 21's concern with dignity and humane treatment provides a basis for non-carceral sanctions, while Article 14 demands that such sanctions not be administered arbitrarily or discriminatorily (Constitution of India, 1950, arts. 14, 21; *Maneka Gandhi v. Union of India*, 1978).

However, any constitutional endorsement of community service depends on legal clarity and institutional safeguards. If the nature, duration, and monitoring of community service are left excessively discretionary, outcomes could vary widely across jurisdictions, raising Article 14 concerns. Legislative and judicial elaboration thus becomes necessary to ensure that community service functions as a coherent sentencing option rather than as an informal substitute for imprisonment that lacks procedural safeguards.

The PRS legislative analysis has also flagged that the statutory scope of community service may be unclear and may require definition and administrative guidance for consistent implementation (PRS Legislative Research, 2023). The constitutional demand of fair procedure under Article 21 would be undermined if a punishment is nominally non-custodial but operationally coercive, humiliating, or applied without adequate hearing and reasons.

Offences Against the State and Speech: Section 152 and the Sedition Afterlife

One of the most constitutionally sensitive aspects of the BNS is its treatment of offences relating to the State. PRS reports that sedition is no longer an offence under the BNS's framework; instead, the statute introduces a new offence concerning acts endangering the sovereignty, unity, and integrity of India (PRS Legislative Research, 2023). The statutory text of Section 152 criminalizes conduct that, through words, signs, visible representation, electronic communication, financial means, or otherwise, "excites or attempts to excite" secession, armed rebellion, subversive activities, separatist feelings, or endangers sovereignty, unity, and integrity, prescribing punishment that may extend to life imprisonment or to imprisonment up to seven years, along with fine.

This provision sits at the intersection of Article 19(1)(a) and Article 19(2). Historically, the Supreme Court in *Kedar Nath Singh v. State of Bihar* (1962) restricted the application of sedition to speech involving incitement to violence or public disorder. If Section 152 is interpreted expansively to criminalize mere criticism, dissent, or symbolic protest without the requisite nexus to violence or public disorder, it risks constitutional invalidity on grounds of overbreadth, vagueness, and disproportionate restriction (Constitution of India, 1950, art. 19; *Shreya Singhal v. Union of India*, 2015; *Kedar Nath Singh v. State of Bihar*, 1962).

The constitutional contestation is not merely theoretical. Public reporting indicates that in August 2025 the Supreme Court issued notice to the Union Government on a petition challenging the constitutional validity of Section 152, with the petitioner arguing that it amounts to a "repackaged" sedition provision with vague and broad categories of expressive conduct. The presence of such litigation suggests that the judicial approach to Section 152 will likely rely on established free speech doctrines, including the requirement of narrow tailoring and the judicial preference for reading down vague language rather than accepting expansive criminalization of expression (*Shreya Singhal v. Union of India*, 2015).

Civil society critique has likewise emphasized that the new offence may replicate the repressive potential of sedition, arguing that claims of having removed sedition are unconvincing if substantively similar criminalization continues under a new label (Amnesty International, 2024). While such claims are not determinative of constitutionality, they highlight the democratic legitimacy stakes associated with offences that regulate political speech and dissent.

Organised Crime and Petty Organised Crime: Expansion of Substantive Criminalization

The BNS introduces organised crime as a statutory offence, which, according to its text, carries severe penalties. Section 111 provides that when organised crime results in death, punishment may be death or life imprisonment with a minimum fine threshold, and in other cases it prescribes a minimum imprisonment term extending up to life, also with substantial fines; it further criminalizes abetment, facilitation, syndicate membership, harbouring, and possession of property derived from organised crime. Section 112 defines "petty organised crime" as certain group or gang-based criminal acts including theft, snatching, cheating, unauthorized ticket selling, unauthorized betting or gambling, and related activities, with punishment ranging from at least one year up to seven years, with fine.

From the perspective of constitutional criminal law, three issues arise. First, definitional breadth can raise Article 14 concerns if ordinary criminal conduct is elevated into a syndicate-based category without adequate limiting criteria. Second, severe mandatory minimum penalties can invite proportionality scrutiny under Article 21, particularly where culpability gradations are not adequately recognized. Third, overlap with pre-existing special statutes and state laws can create layered criminalization regimes, leading to prosecutorial discretion that may be vulnerable to arbitrariness or selective enforcement (Constitution of India, 1950, arts. 14, 21; PRS Legislative Research, 2023).

The PRS analysis notes that adding organised crime to the central code may fill gaps in states without special

organised crime laws, but it may also duplicate regimes where special laws already exist, potentially producing regulatory complexity and inconsistent procedures or penalties across regimes (PRS Legislative Research, 2023). In judicial review, such overlap does not automatically invalidate a statute, but it can intensify scrutiny of arbitrariness and highlight the need for coherent prosecutorial guidelines.

Terrorist Act: Codification and Overlap with Special Statutes

Section 113 of the BNS introduces “terrorist act” as an offence. The PRS brief reports that terrorism in the BNS is defined with reference to threats to unity, integrity, security, or economic security of the country, or acts that strike terror in people, with punishments that may include death or life imprisonment where death results, and imprisonment from five years up to life in other cases (PRS Legislative Research, 2023). The constitutional concern here is not only severity of punishment but also the danger of over-inclusion. Counter-terrorism offences often implicate speech, association, and movement rights, and can interact with preventive detention regimes and evidentiary practices. Courts have historically examined such regimes through Article 21 fairness and Article 19 reasonableness, while also deferring to national security concerns to a limited extent depending on context (Constitution of India, 1950, arts. 19, 21; A.K. Gopalan v. State of Madras, 1950; Maneka Gandhi v. Union of India, 1978).

The overlap with the Unlawful Activities (Prevention) Act, 1967 (UAPA), noted by PRS, is constitutionally important because procedural safeguards and bail conditions can vary across statutes, creating divergent fairness outcomes (PRS Legislative Research, 2023). A constitutional approach would therefore insist on consistent minimum guarantees of fair trial and due process regardless of whether prosecution proceeds under the BNS or special security statutes (Constitution of India, 1950, art. 21).

Extraterritorial Reach and Cyber-Targeting: Jurisdiction and Fairness

The BNS contains an explicit extraterritorial application clause that extends the statute to offences committed outside India that target a “computer resource located in India.” This development is significant because cyber offences often involve cross-border conduct, and jurisdictional reach is crucial to effective enforcement. Yet constitutional fairness requires that extraterritorial criminal law be administered with clear jurisdictional triggers, fair notice, and procedural safeguards for accused persons who may be subjected to prosecution far from the locus of conduct (Constitution of India, 1950, arts. 20, 21). The legality principle in Article 20(1) is especially relevant to ensuring that jurisdictional rules do not operate retroactively or unpredictably.

Table 2: Selected BNS Provisions and Their Constitutional Touchpoints

BNS Provision	Statutory Content (Condensed)	Constitutional Touchpoint	Likely Judicial Inquiry
Section 4	Adds community service as a punishment	Articles 14 and 21	Whether administration is non-arbitrary, proportionate, and procedurally fair.
Section 111	Creates organised crime offence with severe penalties and related liability forms	Articles 14 and 21	Whether definitions and penalty structures are proportionate; whether overlap creates arbitrary enforcement.
Section 112	Defines petty organised crime for gang/group acts such as snatching and cheating	Articles 14 and 21	Whether breadth captures ordinary offences without adequate limiting principle
Section 113	Introduces terrorist act as an offence	Articles 19 and 21	Whether definition is overbroad; fairness of process and proportionality of punishment.
Section 152	Criminalizes acts endangering sovereignty, unity, integrity; includes words and electronic communication; punishment may extend to life or seven years	Articles 19 and 21	Whether provision is vague/overbroad; whether it can be read down to incitement/public disorder standard; ongoing constitutional contestation.
Section 1(5)(c)	Extends application to offences committed abroad targeting computer resources in India	Articles 20 and 21	Fair notice, legality, and procedural fairness in transnational prosecutions.

Gender-Inclusive Drafting and Equality Norms

The BNS definition section provides that the pronoun “he” and its derivatives are used of any person, including male, female, or transgender, and it references the statutory definition of transgender under the Transgender Persons (Protection of Rights) Act, 2019. This drafting choice interacts with Article 14’s equality mandate and with constitutional jurisprudence recognizing transgender persons’ rights and dignity (National Legal Services Authority v. Union of India, 2014). While inclusive drafting does not resolve substantive questions about gendered offences, it signals an attempt to align criminal law language with constitutional equality commitments. **Gender-Inclusive Drafting and Equality Norms**

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Constitutionalization of Procedure and the “Fair, Just, and Reasonable” Standard

The judicial approach to criminal law in India is best understood as a constitutional methodology rather than a case-by-case reaction. Since *Maneka Gandhi v. Union of India* (1978), Article 21 has been read to require that any “procedure established by law” must be fair, just, and reasonable, thereby importing substantive due process-like standards into criminal adjudication. This approach has enabled courts to develop a rights-protective criminal procedure framework, particularly around arrest, detention, custodial violence, and interrogation.

For example, *D.K. Basu v. State of West Bengal* (1997) created enforceable safeguards to reduce custodial abuse; *Arnesh Kumar v. State of Bihar* (2014) restricted routine arrests for certain offences and strengthened the idea that arrest is not a mechanical consequence of accusation; and *Selvi v. State of Karnataka* (2010) strengthened Article 20(3) protections by limiting coercive investigative techniques. These decisions collectively demonstrate that the judicial approach to criminal justice is anchored in constitutional discipline over executive power.

Interpretation of Penal Statutes: Legality, Narrow Construction, and Reading Down

In addition to procedural constitutionalism, courts have maintained interpretive doctrines specific to penal statutes. The legality principle demands that offences be defined with sufficient clarity. Penal statutes are commonly interpreted strictly where liberty is at stake, even as courts sometimes adopt purposive interpretation to align statutes with constitutional values. When statutory language is constitutionally problematic but capable of a constitutionally compliant interpretation, the Court may “read down” the provision to preserve validity while narrowing operation, as occurred in multiple free speech and privacy-related contexts (*Shreya Singhal v. Union of India*, 2015; *Justice K.S. Puttaswamy v. Union of India*, 2017).

This tradition is especially relevant for BNS Section 152, where the statutory language includes broad categories such as “subversive activities” and “encourages feelings of separatist activities.” Given established jurisprudence, a plausible judicial route is to constrain the provision by requiring demonstrable incitement to violence or public disorder, thereby integrating the *Kedar Nath* limitation logic into the post-IPC landscape (*Kedar Nath Singh v. State of Bihar*, 1962). Whether such reading down is feasible depends on the Court’s assessment of textual elasticity and legislative purpose.

Early Signals Under the New Regime: Litigation and Compliance Discourses

The judicial approach to the BNS is now beginning to develop in real time. The reported Supreme Court notice to the Union Government on a petition challenging Section 152 provides an early example of constitutional contestation under the new code. Although a notice does not imply a final view, it indicates that courts will likely treat Section 152 as a high-stakes provision requiring careful scrutiny in light of India’s free speech and public order jurisprudence.

Separately, courts’ attention to procedural compliance under the BNSS may indirectly shape enforcement of BNS offences. The BNSS requires audio-video recording of searches and seizures under Section 105. To the extent courts insist on strict adherence, prosecutions under the BNS may be affected through exclusionary reasoning, credibility assessments, or constitutional remedies, thereby reinforcing the constitutional commitment that state coercion must remain reviewable and accountable.

Table 3: Landmark Judicial Doctrines Relevant to Interpreting and Testing the BNS

Judicial Authority	Core Principle	Relevance for BNS
Maneka Gandhi v. Union of India (1978)	Procedure must be fair, just, and reasonable under Article 21	Anchors due process review of enforcement practices and penalty regimes
Kedar Nath Singh v. State of Bihar (1962)	Speech-related offences must be tied to incitement/public disorder	Provides a limiting template for interpreting Section 152 consistently with Article 19
Shreya Singhal v. Union of India (2015)	Vagueness/overbreadth concerns; strong free speech protection	Informs constitutional scrutiny of broad speech restrictions and undefined terms
D.K. Basu v. State of West Bengal (1997)	Custodial safeguards and accountability	Shapes policing constraints in investigating BNS offences
Arnesh Kumar v. State of Bihar (2014)	Arrest should be justified and non-routine	Impacts enforcement intensity for BNS offences; complements Article 21 protections
Selvi v. State of Karnataka (2010)	Strengthens Article 20(3) protections against compelled self-incrimination	Relevant to investigation and admissibility of evidence in BNS prosecutions
Bachan Singh v. State of Punjab (1980)	“Rarest of rare” doctrine for death penalty	Affects sentencing in BNS offences carrying death penalty and proportionality review

Discussion: The BNS Through a Constitutional Lens

Replacement Versus Reform: The Constitutional Measure of Legitimacy

The constitutional evaluation of the BNS cannot be reduced to the symbolic claim of replacing a colonial-era code. The legitimacy of criminal law in a constitutional democracy is measured by whether offences are clearly defined, narrowly tailored when they restrict fundamental freedoms, proportionate in punishment, and implemented through fair procedures. In this respect, the BNS’s introduction of community service may be a promising avenue for reducing unnecessary incarceration, but its constitutional value depends on transparent standards and non-discriminatory administration.

The codification of organised crime and terrorist acts expands the State’s capacity to prosecute complex collective harms, but it also intensifies the constitutional need for definitional precision and procedural safeguards, particularly given the severe penalties involved. The expansion of the statute’s extraterritorial reach to cyber-targeting reflects modern enforcement needs, but the judiciary will likely insist that transnational prosecutions comply with fairness, notice, and legality principles.

Section 152 as a Constitutional Stress Test

Among BNS provisions, Section 152 is likely to be a doctrinal stress test for the Court’s ability to preserve national security concerns while preventing the criminalization of legitimate dissent. The provision’s breadth and the public framing of it as a sedition replacement generate constitutional risks under Article 19 and Article 21, particularly if enforcement patterns

replicate the historical misuse concerns associated with sedition. The presence of constitutional challenge litigation also indicates that the judiciary will be compelled to articulate standards that either narrow or invalidate aspects of the provision, thereby shaping the long-term constitutional identity of the new criminal code.

Conclusion

The constitutional framework remains the most stable and normatively decisive lens for evaluating the BNS. While the BNS formally consolidates and amends substantive criminal law and replaces the IPC, its constitutional destiny will be shaped by how courts interpret, limit, and review its provisions in light of Articles 14, 19, 20, 21, and 22. The introduction of community service signals the possibility of non-carceral punishment aligned with dignity and proportionality, but it requires clear standards to satisfy equality and fairness. The codification of organised crime and terrorism responds to contemporary criminal threats, yet raises heightened concerns about overbreadth, overlap with special laws, and harsh punishment structures. Section 152, criminalizing acts endangering sovereignty, unity, and integrity, is poised to become the most litigated and constitutionally scrutinized BNS provision, and its interpretive fate will likely reflect the Supreme Court’s broader approach to free speech, public order, and the legality principle. Ultimately, the success of the new criminal law framework will depend less on legislative replacement and more on constitutional implementation: the capacity of courts, investigative agencies, and trial institutions to operationalize criminal justice in a manner that preserves liberty, dignity, and democratic contestation while maintaining legitimate public order.

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