 DOI: https://10.5281/zenodo.22911622

Reconstructing Criminal Liability in India: Mens Rea, Judicial Interpretation and the Bharatiya Nyaya Sanhita, 2023

Khushboo[1]

© The Author(s), under exclusive licence to Oxford Law Review 2026.

Abstract

The enactment of the Bharatiya Nyaya Sanhita, 2023 marks a significant reorganisation of India's substantive criminal law and raises renewed questions concerning the foundations of criminal responsibility. This article examines the changing architecture of criminal liability under the new statutory framework, with particular emphasis on *mens rea*, intention, knowledge, evidentiary inference and judicial interpretation. It argues that criminal liability cannot be established solely through the identification of prohibited conduct or harmful consequences. The attribution of criminal responsibility requires a principled connection between the accused's conduct, the mental element prescribed by the offence, and evidence sufficient to establish that element. The article further examines how the Bharatiya Sakshya Adhiniyam, 2023 structures the evidentiary process through which intention, motive, preparation and subsequent conduct may become relevant to criminal adjudication. Particular attention is given to the judicial task of distinguishing legitimate inference from suspicion when determining guilt on circumstantial evidence. Drawing upon Indian criminal jurisprudence and contemporary scholarship on legal meaning, the article contends that the BNS should not be understood merely as a replacement of the Indian Penal Code, 1860, but as a new statutory setting in which established principles of culpability require careful judicial application. It concludes that legality, *mens rea*, evidentiary discipline and reasoned interpretation remain essential safeguards against unjustified expansion of criminal responsibility.

Keywords: Bharatiya Nyaya Sanhita; Criminal Liability; Mens Rea; Criminal Culpability; Judicial Interpretation; Criminal Evidence

1. Introduction

Criminal liability represents one of the most coercive forms of state power because a finding of guilt may result in the deprivation of liberty, property, reputation and, in the most serious cases, life. The legitimacy of that power therefore depends not merely upon the existence of a statutory prohibition, but upon the legal conditions under which conduct may properly be attributed to an accused as

[1] **Advocate at High Court of Punjab & Haryana, Chandigarh, India; Department of Laws, Panjab University, Chandigarh, India**

 DOI: https://10.5281/zenodo.22911622

criminally blameworthy. Indian criminal law has traditionally approached this problem through the relationship between the prohibited act and the requisite mental state, subject to statutory modifications and recognised exceptions. The Supreme Court has repeatedly treated *mens rea* as a fundamental principle of criminal responsibility, while recognising that legislation may exclude it expressly or by necessary implication where the statutory scheme warrants such an interpretation (*State of Maharashtra v Mayer Hans George* 1965; *Nathulal v State of Madhya Pradesh* 1966). The central question, therefore, is not simply whether prohibited conduct occurred, but whether the law provides a principled basis for attributing that conduct and its consequences to the accused.

The commencement of the Bharatiya Nyaya Sanhita, 2023 (BNS) on 1 July 2024 marks an important point at which these foundations require renewed examination. The BNS replaced the Indian Penal Code, 1860 as the principal general penal statute and purports to consolidate and amend the law relating to offences and matters connected with or incidental thereto (Bharatiya Nyaya Sanhita 2023). The significance of the transition, however, cannot be assessed merely by identifying newly created offences or comparing statutory language with corresponding provisions of the former Code. The more fundamental issue concerns the architecture of criminal responsibility: how intention, knowledge, voluntariness, causation, participation and legally recognised circumstances of justification or excuse operate within the new statutory framework. Section 1(3) of the BNS expressly frames liability in terms of an act or omission contrary to the Sanhita "of which he shall be guilty", while the substantive provisions employ different formulations of mental state according to the nature of particular offences (Bharatiya Nyaya Sanhita 2023).

The doctrine of *mens rea* is particularly important in this context because it functions as a limiting principle against the transformation of mere factual causation or physical participation into criminal blameworthiness. Indian jurisprudence does not, however, treat *mens rea* as an inflexible requirement applicable identically to every statutory offence. The Supreme Court has distinguished the general presumption in favour of a mental element from exceptional statutory regimes in which the legislature, expressly or by necessary implication, creates liability without requiring the ordinary guilty mind (*State of Maharashtra v Mayer Hans George* 1965). Similarly, the Court has emphasised that the exclusion of *mens rea* cannot be inferred merely from the regulatory or welfare-oriented character of legislation (*State of Rajasthan v Shera Ram* 2012). The resulting jurisprudence places considerable interpretive responsibility upon courts: they must determine from statutory language, structure, purpose and the nature of the offence whether criminal responsibility requires a particular mental state and, if so, what that state entails.

This interpretive dimension is especially significant under the BNS because criminal liability cannot be understood exclusively through statutory text divorced from judicial construction. The meaning of an offence emerges through the interaction between legislative formulation, factual circumstances and judicial interpretation. Singh's work on the juridical significance of language and legal recognition similarly demonstrates that legal meaning is constituted through institutional processes of interpretation rather than through words considered in isolation (Singh 2025; Singh 2026). Applied to criminal law, this insight has a narrower but consequential implication: the attribution of criminal responsibility depends upon how courts interpret the relationship between conduct, circumstance and mental state. The question is therefore not whether the BNS has simply

changed the statutory vocabulary of Indian criminal law, but whether its operation alters the principles by which blame is legally attributed.

The article examines this problem through three interconnected questions. First, what conception of criminal responsibility emerges from the BNS and how does it relate to the established Indian doctrine of *mens rea*? Secondly, how should intention and knowledge be interpreted where the statutory language leaves their precise content to judicial determination? Thirdly, what limits should judicial interpretation observe when determining criminal liability, particularly where an expansive construction may extend penal responsibility beyond demonstrable culpability? The article argues that the transition from the IPC to the BNS should not be understood as a complete reconstruction of Indian criminal responsibility. Rather, the BNS provides a new statutory framework within which established principles of culpability continue to perform a limiting function, subject to the particular language and structure of individual offences. Criminal liability should consequently remain anchored in legally ascertainable conduct and culpable mental states, with departures from the ordinary requirement of *mens rea* requiring clear statutory justification rather than assumption.

The analysis proceeds on the premise that the legitimacy of criminal adjudication depends upon maintaining a principled distinction between conduct that is merely prohibited and conduct that is sufficiently attributable to an accused to justify penal condemnation. The BNS makes the examination of that distinction timely because its provisions must now be interpreted within a new statutory framework while constitutional guarantees of legality, fairness and individual liberty continue to constrain the exercise of penal power. The article therefore focuses not on a comprehensive comparison of the BNS and the IPC, but on the narrower and more fundamental question of how Indian law should conceptualise and judicially determine criminal responsibility under the new penal code.

2. The Changing Architecture of Criminal Liability under the Bharatiya Nyaya Sanhita, 2023

The Bharatiya Nyaya Sanhita, 2023 (BNS) constitutes a significant statutory reorganisation of India's substantive criminal law. It repealed the Indian Penal Code, 1860 and came into force on 1 July 2024, subject to the statutory exception concerning section 106(2) at the commencement stage (Bharatiya Nyaya Sanhita 2023). The change is therefore not merely terminological. The BNS reorganises the classification of offences, punishment structures and forms of participation in crime, while introducing specific offences directed at conduct such as organised crime, petty organised crime and terrorist acts. Its architecture consequently requires criminal liability to be examined as a structured relationship between prohibited conduct, legally relevant circumstances, mental state, participation and prescribed punishment rather than through the isolated identification of an offence.

At the foundational level, the BNS retains the conventional structure through which criminal responsibility is attached to an "act" or "omission" contrary to the Sanhita. Section 3 contains general explanations applicable to the interpretation of its provisions, while the subsequent chapters distinguish punishments, general exceptions, abetment, criminal conspiracy and attempt (Bharatiya Nyaya Sanhita 2023). This structure is important because liability under a penal statute

cannot ordinarily be determined solely by establishing that an event falling within the factual description of an offence has occurred. The legal inquiry must also determine whether the accused's conduct falls within the statutory conditions of responsibility and whether any applicable exception, justification or limitation prevents criminal attribution. The BNS thus preserves the conceptual distinction between the prohibited conduct itself and the conditions under which that conduct becomes attributable to a particular person as a criminal offence.

The treatment of participation illustrates this architecture particularly clearly. Chapter IV places abetment, criminal conspiracy and attempt within a connected statutory framework. Section 45 defines abetment through instigation, participation or intentional aiding, while the succeeding provisions address the consequences of abetment in circumstances where the act abetted is committed, produces a different effect, or is accompanied by the presence of the abettor (Bharatiya Nyaya Sanhita 2023). These provisions demonstrate that criminal responsibility under the BNS is not confined to the person who physically performs the principal act. Liability may extend to conduct that facilitates, encourages or otherwise contributes to the commission of an offence, but the statutory scheme attaches different consequences according to the nature of the participation and the relationship between the participant's mental state and the resulting conduct. The architecture is therefore one of differentiated attribution rather than undifferentiated responsibility.

The BNS also expands the substantive field of criminal liability by expressly incorporating offences that respond to forms of collective and contemporary criminality. Sections 111 and 112 address organised crime and petty organised crime respectively, while section 113 creates a distinct statutory framework for terrorist acts (Bharatiya Nyaya Sanhita 2023). The significance of these provisions lies not simply in the creation of additional offences, but in the movement from conventional individualised conceptions of criminal conduct towards forms of liability concerned with organised structures, continuing criminal activity and collective threats. Such provisions make precision in defining the constituent elements of an offence particularly important because broader descriptions of criminal conduct increase the interpretive significance of the boundaries between participation, preparation, association and completed criminal conduct.

The architecture is similarly evident in the BNS's treatment of offences against women and children. The statutory scheme places offences against women and children within a dedicated chapter and introduces, among other provisions, section 69 concerning sexual intercourse by deceitful means and section 70 concerning gang rape (Bharatiya Nyaya Sanhita 2023). The creation and formulation of such offences demonstrate the legislature's attempt to identify particular forms of harmful conduct through more specific statutory descriptions. At the same time, their application depends upon judicial determination of legally significant concepts such as consent, deception, knowledge, intention and causal connection. The statutory description therefore supplies the legal framework, while adjudication determines whether the proved facts satisfy each constituent element of the offence.

Punishment is another component of the changing architecture. Section 4 of the BNS enumerates punishments and includes community service among the forms of punishment recognised by the Sanhita (Bharatiya Nyaya Sanhita 2023). This is significant for the structure of criminal liability because the determination that conduct constitutes an offence and the

determination of the appropriate penal consequence are conceptually distinct exercises. Criminal responsibility requires the establishment of the statutory offence, whereas sentencing requires consideration of the punishment authorised by law and the circumstances relevant to its application. The BNS therefore does not merely catalogue prohibited behaviour; it constructs a graduated legal response through which different forms and degrees of criminal wrongdoing attract different consequences.

The resulting framework also reinforces the importance of the general principles that operate across individual offences. The BNS contains general exceptions and provisions governing abetment, conspiracy and attempt, demonstrating that criminal liability is conditioned by more than the literal occurrence of prohibited conduct (Bharatiya Nyaya Sanhita 2023). The general structure consequently accommodates circumstances in which an act that appears to satisfy the external description of an offence may nevertheless fall outside criminal responsibility because of a recognised legal exception. This preserves an essential distinction between the factual occurrence of conduct and its normative attribution as criminal wrongdoing.

The transition from the IPC to the BNS should therefore not be understood as replacing the conceptual foundations of criminal responsibility with an entirely new theory of liability. Rather, the BNS reorganises and extends the statutory framework within which those foundations operate. The principal challenge now lies in determining how established principles of culpability are to be applied to newly formulated offences and altered statutory language. This is particularly important where liability depends upon concepts such as intention, knowledge, participation or the likelihood of a particular consequence. The architecture of the BNS consequently places considerable responsibility upon courts to maintain a principled relationship between statutory language and criminal blameworthiness. In this respect, the significance of the new Code lies less in the simple replacement of one penal statute by another than in the continuing judicial task of determining when conduct becomes sufficiently attributable to an individual to justify the coercive consequences of criminal conviction.

3. From Meaning to Mens Rea: Semiotics, Intention and Criminal Culpability

The concept of *mens rea* cannot be reduced to the existence of an abstract "guilty mind". In criminal adjudication, the mental element becomes legally significant only through the interpretation of conduct, circumstances and evidence. Intention, knowledge, reason to believe, dishonesty and related states of mind are not ordinarily observable as physical facts; they are juridical conclusions drawn from the relationship between what an accused did, the circumstances in which the act occurred, and the consequences that the law treats as relevant. Criminal culpability therefore involves an interpretive movement from observable conduct to legally attributed mental state. The significance of this distinction is particularly apparent under the Bharatiya Nyaya Sanhita, 2023 (BNS), whose offence provisions repeatedly employ concepts such as intention and knowledge without reducing their application to a single uniform test (Bharatiya Nyaya Sanhita 2023).

The Indian Supreme Court has long recognised *mens rea* as an important component of criminal responsibility while rejecting the proposition that every offence must necessarily contain an

identical mental element. In *Nathulal v State of Madhya Pradesh* (1966), the Court affirmed that *mens rea* is ordinarily an essential ingredient of a criminal offence, subject to exclusion by express statutory language or necessary implication. The Court further emphasised that the mental element applicable to a statutory offence depends upon the object and provisions of the legislation (*Nathulal* 1966). The principle was similarly articulated in *State of Maharashtra v Mayer Hans George* (1965), where the Court treated the existence of a presumption in favour of *mens rea* as a matter of statutory construction rather than an absolute rule incapable of legislative modification (*Mayer Hans George* 1965). The consequence is that criminal intention is not simply discovered within the accused's mind; it is legally attributed through interpretation of the offence and the facts proved in the particular case.

This interpretive character becomes clearer when intention and knowledge are distinguished. Intention ordinarily concerns the mental direction of conduct towards a particular consequence or object, whereas knowledge concerns awareness of circumstances or consequences that make the conduct legally significant. The distinction matters because the same physical act may carry different criminal consequences depending upon the mental state established by the prosecution. The BNS itself reflects this differentiation. Section 110, for example, defines attempted culpable homicide by reference to an act performed with the requisite "intention or knowledge" and in circumstances in which the resulting death would have constituted culpable homicide not amounting to murder (Bharatiya Nyaya Sanhita 2023). The statutory formulation therefore requires courts to determine not merely whether the accused performed the relevant act, but what the accused intended or knew in the circumstances in which that act was performed.

The determination of such mental states necessarily depends upon legally relevant indicators. A court cannot ordinarily inspect intention directly; it must infer it from conduct and surrounding circumstances. The inference may arise from the nature of the act, the manner in which it was performed, the relationship between the parties, the means employed, prior or subsequent conduct, and the consequences that were reasonably connected with the accused's actions. Such inference must nevertheless remain an inference rather than an assumption. To equate the occurrence of a prohibited consequence with intention would collapse the distinction between culpable conduct and mere causation. The requirement of *mens rea* has significance precisely because criminal law does not ordinarily treat every harmful consequence as sufficient evidence of criminal blameworthiness.

This distinction also explains why intention should not be confused with motive. Motive may assist a court in understanding why an accused acted, but it is not necessarily an element of the offence. Intention concerns the mental element required by the particular offence, whereas motive concerns the reason that may have prompted the conduct. A person may possess a criminal intention without the motive alleged by the prosecution being established, and a morally objectionable motive does not by itself establish the mental element required for conviction. The distinction preserves the doctrinal discipline of criminal adjudication by requiring the prosecution to prove the mental element prescribed by law rather than relying upon a generalised assessment of the accused's character or reasons for acting.

 DOI: https://10.5281/zenodo.22911622

The attribution of intention also raises a problem of evidentiary translation. Facts enter the criminal process as evidence, but their legal significance depends upon the proposition for which they are relied upon. Conduct may support an inference of intention in one factual context while remaining equivocal in another. Consequently, the judicial determination of *mens rea* requires a reasoned connection between the proved facts and the particular mental element required by the offence. This is consistent with the Supreme Court's approach in *Mayer Hans George,* which treated the question whether a mental element exists as dependent upon the statutory language, purpose and subject matter of the offence rather than upon an abstract presumption detached from the legislative scheme (*Mayer Hans George* 1965).

The significance of this approach becomes greater where criminal statutes employ broad or evaluative concepts. The more open-textured the statutory language, the greater the possibility that judicial interpretation will determine the practical boundaries of criminal responsibility. That interpretive authority must, however, operate within the principle of legality. Criminal liability should be established by reference to conduct and mental states that can reasonably be connected to the statutory elements of the offence, rather than by retrospective moral assessment of behaviour. The judicial task is consequently neither mechanical application nor unrestricted construction: it is to identify the legally required mental element and determine, on the evidence, whether that element has been proved beyond the applicable standard.

The BNS does not eliminate this interpretive problem. Its adoption of different formulations of intention, knowledge and related mental states instead makes careful judicial differentiation more important. The continuing relevance of *mens rea* therefore lies not in treating it as a universal formula but in preserving a principled connection between prohibited conduct and individual culpability. Criminal punishment becomes legally defensible only when the mental state attributed to the accused corresponds to the requirements of the offence and is supported by evidence capable of sustaining that attribution. The central question under the BNS is accordingly not whether *mens rea* survives the transition from the IPC, but how courts should identify, interpret and prove the particular mental state that each offence requires.

4. Interpreting Guilt: Signs, Evidence and the Construction of Criminal Responsibility

Criminal responsibility is ultimately established through proof, and proof requires courts to translate factual circumstances into legally relevant propositions. The accused's intention, knowledge or awareness is rarely capable of direct observation. It is ordinarily inferred from conduct, surrounding circumstances and other evidence from which the existence of a particular mental state may reasonably be established. The law therefore does not treat every fact surrounding an offence as equally significant; it determines which facts are relevant to the issue of culpability and what inference may legitimately be drawn from them. As Singh's analysis of juridical meaning demonstrates, legal significance is not inherent in an act or expression alone but emerges through the institutional process by which law interprets and assigns meaning to it (Singh 2025; Singh 2026). In criminal adjudication, this interpretive process assumes particular importance because the

meaning attributed to conduct may determine whether it constitutes evidence of intention, knowledge, participation or culpability.

Under the Bharatiya Sakshya Adhiniyam, 2023 (BSA), facts indicating motive or preparation and the previous or subsequent conduct of a person may be relevant to the determination of a fact in issue (Bharatiya Sakshya Adhiniyam 2023, s 6). The evidentiary structure consequently performs a critical mediating function between observable conduct and the legal conclusion of guilt. Conduct becomes legally significant not merely because it occurred, but because its relationship with the facts in issue permits a legally relevant inference to be drawn.

The relevance of conduct to the attribution of criminal responsibility does not, however, permit an automatic inference of guilt. Section 6 of the BSA recognises the relevance of conduct where it is connected with a fact in issue or relevant fact. Its illustrations include procurement of poison before an alleged poisoning, destruction or concealment of evidence, and conduct following information that an investigation is being undertaken (Bharatiya Sakshya Adhiniyam 2023, s 6). These circumstances may possess evidentiary significance because they can illuminate the relationship between an accused and the alleged offence. Their legal value nevertheless depends upon the inference they support in the particular factual context. Evidence of preparation may indicate intention; subsequent concealment may suggest consciousness of wrongdoing; but neither circumstance, considered in isolation, necessarily establishes the constituent elements of the offence.

This distinction is fundamental to the interpretation of *mens rea*. A criminal court does not ordinarily ask whether the accused's conduct appears suspicious in the abstract. It must determine whether the proved facts establish the specific mental element required by the offence. The inference must therefore remain tied to the statutory definition of the crime. Where the BNS requires intention, knowledge or another specified mental state, evidence must be assessed in relation to that particular requirement rather than used to construct a generalised conclusion that the accused was blameworthy. The interpretive character of this exercise is important: the court moves from an evidential fact to a legal proposition, and that movement requires reasons capable of demonstrating why the particular inference follows from the evidence (Singh 2025; Singh 2026). This maintains the separation between moral suspicion and legal culpability and prevents the evidentiary process from becoming a substitute for proof of the offence itself.

The problem becomes particularly acute in cases based substantially or entirely upon circumstantial evidence. Circumstantial evidence does not establish guilt through a single direct observation of the criminal act; rather, guilt is inferred from a collection of established circumstances. The Supreme Court has consistently required the circumstances relied upon to be firmly established and the cumulative chain of evidence to be consistent with guilt and inconsistent with reasonable hypotheses of innocence (*Sharad Birdhichand Sarda v State of Maharashtra* 1984). The Court has emphasised that circumstances must form a complete chain from which the conclusion of guilt can properly be drawn, rather than merely creating suspicion against the accused. This requirement is especially important where the prosecution seeks to infer an unobservable mental state from observable conduct.

The evidentiary inference of intention therefore has an inherently contextual character. The same act may signify different mental states depending upon the circumstances in which it occurs.

Possession of an object, for example, may be consistent with innocent conduct, preparation for an offence, or participation in an offence, depending upon the surrounding facts. Similarly, flight, concealment or destruction of evidence may support an inference adverse to an accused, but such conduct cannot dispense with the requirement of proving the statutory elements of the offence. The evidentiary significance of a fact must consequently be distinguished from its conclusiveness. A fact may be relevant without being determinative.

This distinction also limits the use of post-offence conduct in establishing prior intention. Subsequent conduct may provide evidence concerning an accused's state of mind, but its probative value depends upon the connection between that conduct and the fact that the prosecution seeks to establish. Section 6 of the BSA expressly recognises previous and subsequent conduct as potentially relevant, thereby preserving an evidentiary mechanism through which conduct occurring outside the precise moment of the offence may illuminate the circumstances surrounding it (Bharatiya Sakshya Adhiniyam 2023, s 6). The provision does not, however, transform subsequent conduct into independent proof of every element of the offence. Its significance remains dependent upon the inference that can rationally be drawn from the circumstances as a whole.

The relationship between evidence and criminal responsibility therefore requires judicial reasoning to operate at two distinct levels. First, the court must determine whether a factual circumstance has been established by admissible and legally sufficient evidence. Secondly, it must determine what inference, if any, that established circumstance supports concerning an element of the offence. Collapsing these stages risks converting evidentiary relevance into proof of guilt. The distinction is particularly important when the relevant element is mental rather than physical, because the conclusion that an accused intended, knew or foresaw a particular consequence is itself an inferential proposition requiring justification.

The BNS and BSA, read together, thus preserve an important relationship between substantive criminal law and the law of evidence. The BNS identifies the conduct and mental states that attract criminal responsibility; the BSA determines the evidentiary framework within which those elements may be proved. Criminal culpability emerges only when the evidence establishes facts from which the legally required elements can properly be inferred. The judicial task is consequently not merely to identify circumstances associated with wrongdoing, but to determine whether those circumstances, considered cumulatively and in their proper legal context, establish each constituent element of the offence beyond reasonable doubt. This preserves the distinction between suspicion and proof and, ultimately, between the appearance of guilt and legally established criminal responsibility.

5. Conclusion

The transition from the Indian Penal Code, 1860 to the Bharatiya Nyaya Sanhita, 2023 represents a reorganisation of India's substantive criminal law, but it does not displace the fundamental principle that criminal responsibility must be connected to legally attributable and culpable conduct. The BNS introduces new offences, restructures existing provisions and modifies the statutory framework governing participation and punishment. Yet the legitimacy of these changes ultimately depends

 DOI: https://10.5281/zenodo.22911622

upon how courts interpret the relationship between the prohibited act, the circumstances surrounding it and the mental state required by the particular offence.

The analysis demonstrates that *mens rea* remains significant not as an inflexible formula applicable to every offence, but as a principle requiring criminal liability to correspond with the requirements established by law. Intention and knowledge are not ordinarily observable facts; they are conclusions drawn from proved circumstances. Their attribution therefore requires disciplined judicial reasoning. The distinction between conduct that merely occurred and conduct that was performed with the legally required mental state must remain central to adjudication. Otherwise, the expansion of statutory criminalisation risks allowing factual causation, suspicion or moral disapproval to substitute for proof of culpability.

The relationship between the BNS and the Bharatiya Sakshya Adhiniyam, 2023 reinforces this point. Evidence provides the factual basis from which intention, knowledge and other elements of an offence may be inferred, but evidentiary relevance cannot itself establish criminal guilt. Courts must distinguish between circumstances that legitimately support an inference and circumstances that merely appear suspicious. The requirement of a complete and coherent evidentiary chain is therefore not simply a technical rule of proof; it is a substantive safeguard against attributing criminal responsibility without adequate justification (*Sharad Birdhichand Sarda v State of Maharashtra* 1984).

The interpretive dimension of criminal responsibility also demonstrates the continuing importance of legal meaning. Conduct does not possess a single predetermined legal significance independent of its circumstances. Its significance is established through the application of legal rules to facts and through reasoned judicial interpretation. As Singh's work on juridical meaning illustrates, law transforms conduct, language and social practices into legally intelligible forms through institutional processes of interpretation (Singh 2025; Singh 2026). In criminal law, however, this interpretive power is subject to a particularly stringent constraint: the interpretation must remain anchored to the statutory elements of the offence and the established requirements of criminal proof.

The BNS should consequently be understood neither as a complete rupture with the principles of the former penal system nor as a purely formal renaming of Indian criminal law. Its significance lies in the new statutory context within which established doctrines of culpability must operate. The central responsibility of criminal courts is to ensure that the interpretation of this new framework does not expand penal liability beyond what the legislature has defined and the evidence has established. The continuing force of *mens rea*, evidentiary discipline and principled statutory interpretation is therefore essential to maintaining the distinction between prohibited conduct and punishable culpability.

Ultimately, the legitimacy of criminal liability under the BNS depends upon maintaining a reasoned connection between act, mental state, evidence and legal attribution. Criminal punishment should follow only where the prosecution establishes the constituent elements of the offence through legally admissible and sufficiently probative evidence and where the mental state attributed to the accused corresponds to the statutory requirement. The transformation of Indian criminal law will therefore be measured not merely by the offences contained in the BNS, but by the quality of judicial

reasoning through which those offences are interpreted and applied. A criminal justice system grounded in legality and individual responsibility must ensure that the expansion or reorganisation of penal law does not weaken the fundamental distinction between suspicion, evidence and guilt.

References

Bharatiya Nyaya Sanhita. 2023. *The Bharatiya Nyaya Sanhita, 2023*. Act No. 45 of 2023. New Delhi: Government of India.

Bharatiya Sakshya Adhiniyam. 2023. *The Bharatiya Sakshya Adhiniyam, 2023*. Act No. 47 of 2023. New Delhi: Government of India.

Nathulal v State of Madhya Pradesh. 1966. *AIR 1966 SC 43*. Supreme Court of India.

Sharad Birdhichand Sarda v State of Maharashtra. 1984. *AIR 1984 SC 1622; (1984) 4 SCC 116*. Supreme Court of India.

Singh, Abhinav. 2025. "Speaking Law: Karakia and the Juridical Semiotics of Authority in Aotearoa New Zealand." *International Journal for the Semiotics of Law – Revue Internationale de Sémiotique Juridique* 39 (6): 1867–1886. https://doi.org/10.1007/s11196-025-10400-x.

Singh, Abhinav. 2026. "Burial as Law: Tikanga Māori and the Semiotic Limits of Legal Recognition in Aotearoa New Zealand." *International Journal for the Semiotics of Law – Revue Internationale de Sémiotique Juridique* 39 (2): 761–773. https://doi.org/10.1007/s11196-025-10358-w.

State of Maharashtra v Mayer Hans George. 1965. *AIR 1965 SC 722; (1965) 1 SCR 123*. Supreme Court of India.

State of Rajasthan v Shera Ram. 2012. *(2012) 1 SCC 602; AIR 2012 SC 1*. Supreme Court of India.

Publisher's Note

Oxford Law Review remains neutral with regard to jurisdictional claims in published maps and institutional affiliations. Oxford Law Review or its licensors retain the rights to this article pursuant to the applicable publishing agreement with the author(s) or other rightsholder(s). Any self-archiving, reproduction, distribution, or reuse of the accepted manuscript or published version is subject to the terms of the applicable publishing agreement and applicable law.