Symphony between the punishment pattern under the new Criminal Laws and the Constitutional Safeguards as to ex-post-facto laws covered under Article 20 (1) of Constitution of India and the rider contemplated under Section 6 of General Clauses Act 1897.

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TABLE OF CONTENTS

1. **Abstract**
2. **Introduction: The Legislative Overture**
3. **Part I: Article 20(1) of the Constitution – The Unwavering Constitutional Fortress**
    - 1.1 Historical Evolution and Constituent Assembly Debates
    - 1.2 Anatomy of Article 20(1): Two-Tier Protection
    - 1.3 Prohibition of Retrospective Criminalization
    - 1.4 Prohibition of Enhanced Punishment: The Kedar Nath Principle
    - 1.5 Trial Versus Conviction: The Rao Shiv Bahadur Distinction
    - 1.6 The Amelioration Doctrine: Rattan Lal and Its Exceptions
    - 1.7 Judicial Interpretation Through the Decades
    - 1.8 Relationship with Other Constitutional Provisions
4. **Part II: Section 6 of the General Clauses Act, 1897 – The Statutory Conductor**
    - 2.1 Historical Context and Legislative Intent
    - 2.2 Anatomy of Section 6: The Sixfold Protection
    - 2.3 "Unless a Different Intention Appears": The Judicial Test
    - 2.4 Repeal and Re-enactment: The Bhajan Kaur Principle
    - 2.5 Distinction Between Repeal, Omission, and Amendment
    - 2.6 Interaction with Special Savings Clauses.
5. **Part III: The New Criminal Laws – A Paradigm Shift**
    - 3.1 Philosophical Underpinnings of the Bharatiya Nyaya Sanhita, 2023
    - 3.2 Structural Changes in Punishment Patterns
    - 3.3 Introduction of Community Service as a Punishment
    - 3.4 Enhanced Punishments: A Comparative Analysis
    - 3.5 New Offences and Their Punishment Framework
    - 3.6 Mandatory Minimum Sentencing: A New Approach.
6. **Part IV: Section 358 of the BNS – The Transitional Bridge**
    - 4.1 Textual Analysis of Section 358
    - 4.2 Sub-section (2): The Saving Clause in Detail
    - 4.3 Sub-section (4): The Express Link to Section 6 of the General Clauses Act
    - 4.4 Legislative Intent Behind the Savings Provisions
7. **Part V: Section 531 of the BNSS – The Procedural Counterpart**
    - 5.1 Textual Analysis of Section 531
    - 5.2 Pending Proceedings: The Delhi High Court Interpretation
    - 5.3 Pending Appeals: The Punjab & Haryana High Court Ruling
    - 5.4 Investigations After July 1, 2024: The Rajasthan High Court Clarification
8. **Part VI: The Rajasthan High Court Precedent – Vijay Sharma & Anr v. State of Rajasthan**
    - 6.1 Facts of the Case
    - 6.2 Questions of Law Framed
    - 6.3 Analysis of Section 358 BNS
    - 6.4 Analysis of Section 531 BNSS
    - 6.5 The Three-Pronged Answer
    - 6.6 Significance as a Precedent

9. **Part VII: The Confluence – Harmonizing Constitutional, Statutory, and Transitional Provisions**
    - 7.1 The Symphony Metaphor Explained
    - 7.2 How Article 20(1) and Section 358 BNS Interact
    - 7.3 How Section 6 of the General Clauses Act and Section 358 BNS Interact
    - 7.4 The Complete Harmonious Framework
10. **Part VIII: Comprehensive Practical Scenarios for the District Judiciary**
    - Scenario 1: Offence Committed Pre-BNS, FIR Lodged Post-BNS
    - Scenario 2: Pending Trial on July 1, 2024
    - Scenario 3: Pending Investigation on July 1, 2024
    - Scenario 4: Pending Appeal on July 1, 2024
    - Scenario 5: New Offence Created Under BNS
    - Scenario 6: Offence with Reduced Punishment Under BNS
    - Scenario 7: Offence with Enhanced Punishment Under BNS
    - Scenario 8: Offence Redefined with Different Mens Rea
    - Scenario 9: Procedural Changes Affecting Pending Matters
    - Scenario 10: Multiple Offences Spanning the Transition Date
    - Scenario 11: Economic Offences Under the New Regime
    - Scenario 12: Organized Crime and Terrorist Acts
    - Scenario 13: Community Service as a Sentencing Option
    - Scenario 14: Summary Trial Provisions
    - Scenario 15: Limitation Period Changes
11. **Part IX: The Judicial Toolkit – A Practical Guide**
    - 9.1 The Two-Step Inquiry
    - 9.2 Flowchart for Determining Applicable Law
    - 9.3 Quick Reference Chart for the Bench
    - 9.4 Checklist for Judicial Officers
12. **Part X: Emerging Jurisprudence and Future Directions**
    - 10.1 Early High Court Interpretations
    - 10.2 Issues Awaiting Supreme Court Clarification
    - 10.3 Potential Constitutional Challenges
    - 10.4 The Road Ahead
13. Conclusion: Conducting the Symphony
14. Table of Cases
15. Bibliography and Further Reading
16. Annexures

ABSTRACT

The advent of the Bharatiya Nyaya Sanhita (BNS), 2023; the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023; and the Bharatiya Sakshya Adhiniyam (BSA), 2023, effective from July 1, 2024, marks a seminal shift in Indian criminal jurisprudence. This transition, however, is not a mere legislative event but a constitutional moment demanding careful orchestration of new penal provisions with existing fundamental rights. This paper exhaustively examines the intricate "symphony" between punishment patterns under the new laws and the constitutional safeguards against *ex post facto* laws enshrined in **Article 20(1) of the Constitution of India**. It further explores the crucial interpretative role of **Section 6 of the General Clauses Act, 1897**, which acts as the conductor's baton, ensuring that repeal of old laws does not create legal vacuum or unjustly prejudice rights and liabilities crystallized under the previous regime.

The paper analyzes saving clauses within the new Sanhitas, particularly Section 358 of BNS, examines early High Court precedents including the landmark Rajasthan High Court judgment in *Vijay Sharma*, and provides a comprehensive judicial framework with practical scenarios, flowcharts, reference tables for navigating transitional issues arising in our courts daily.

INTRODUCTION: THE LEGISLATIVE OVERTURE

The repeal of the Indian Penal Code (IPC), 1860; the Code of Criminal Procedure (CrPC), 1973; and the Indian Evidence Act, 1872, and their replacement with the BNS, BNSS, and BSA represents a legislative act of profound consequence. For the first time in independent India's history, the foundational criminal law framework inherited from the colonial era has been comprehensively overhauled.

For the judicial officer, this transition presents a fundamental question that arises in every court, every day: **Which law applies to which Case?**

The answer lies not in a simple binary of old versus new, but in a harmonious blend of constitutional mandate and statutory interpretation. The Constitution acts as the foundational score, setting immutable rules that no legislation can breach. Article 20(1) stands as an unwavering note—a guarantee that no person shall be subjected to retrospective punishment or greater penalty than what existed when the offence was committed.

Simultaneously, the General Clauses Act, 1897 provides the rules of harmony, ensuring that the repeal of one statute and the enactment of another does not lead to chaos. Section 6 serves as the default saving mechanism, preserving rights accrued and liabilities incurred under repealed enactments unless a different legislative intention clearly appears.

The new criminal laws themselves contain their own transitional provisions—Section 358 of BNS and Section 531 of BNSS—which are designed to operate in complete harmony with both Article 20(1) and Section 6 of the General Clauses Act. These provisions create a seamless bridge between the old and new legal orders.

Our duty as judges is to interpret and apply these interlocking provisions to ensure justice is neither hampered by procedural confusion nor violates the guaranteed fundamental rights of the individual. This paper dissects this symphony into its core movements: the absolute prohibition of *ex post facto* punishment under Article 20(1), the saving grace of Section 6 of the General Clauses Act, the specific transitional provisions within the new criminal laws, the emerging jurisprudence from High Courts, and a comprehensive practical guide for the district judiciary.

PART I: ARTICLE 20(1) OF THE CONSTITUTION – THE UNWAVERING CONSTITUTIONAL FORTRESS

1.1 Historical Evolution and Constituent Assembly Debates

Article 20(1) finds its philosophical roots in the natural law principle that law must provide fair notice of what constitutes criminal conduct. The maxim *nullum crimen, nulla poena sine lege* (no crime, no punishment without law) is a cornerstone of civilized criminal jurisprudence.

During the Constituent Assembly debates, Dr. B.R. Ambedkar emphasized the importance of protecting citizens from retrospective criminal legislation. The provision was designed as a non-derogable imperative, immune even from suspension during emergencies (though subsequent constitutional amendments have nuanced this position). Alladi Krishnaswami Ayyar cautioned against "police despotism" and the need to prevent the state from arbitrarily declaring acts criminal after their commission.

1.2 Anatomy of Article 20(1): Two-Tier Protection

Article 20(1) of the Constitution states:

"No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence."

This provision creates two distinct but interrelated protections:

Protection	Scope	Application
First Protection	Prohibition of retrospective criminalization	An act must be an offence under the law *at the time* it was committed
Second Protection	Prohibition of greater penalty	Punishment cannot exceed what was prescribed at the time of the offence

1.3 Prohibition of Retrospective Criminalization

The first part of Article 20(1) declares that if an act was innocent when done, it cannot be made an offence by a later law. This is a complete bar on the creation of *ex post facto* offences.

In **Rao Shiv Bahadur Singh v. State of Vindhya Pradesh**, AIR 1953 SC 394, the Supreme Court held that what is prohibited is the conviction of a person or his subjection to a penalty under *ex post facto* laws. The prohibition extends not merely to the validity of the law but to the conviction or sentence itself.

The honorable Court observed: "The fullest effect must therefore be given to the actual words used in the article." This means that even if a law is constitutionally valid, applying it to acts committed before its enactment would violate Article 20(1).

1.4 Prohibition of Enhanced Punishment: The Kedar Nath Principle

The second part of Article 20(1) is of immense practical importance. It mandates that even for an act that was an offence at the time of commission, a person cannot be subjected to a penalty greater than what was prescribed under the then-existing law.

In **Kedar Nath Bajoria v. State of West Bengal**, AIR 1953 SC 404, the defendant committed an offence in 1947 under the Prevention of Corruption

Act, which then prescribed imprisonment or fine or both. In 1949, by amendment, the punishment was enhanced. Chatterjee was fined Rs. 50,000 for accepting Rs. 47,550 from the government as compensation that he falsely claimed.

The honorable Supreme Court set aside the excess fine, holding that the enhanced punishment would not be applicable to the offence committed in 1947 because of the prohibition contained in Article 20(1). The benchmark for punishment is frozen at the time of the act.

1.5 Trial Versus Conviction: The Rao Shiv Bahadur Distinction

A critical clarification emerged in **Rao Shiv Bahadur Singh** regarding the scope of Article 20(1). The honorable apex Court held that Article 20(1) prohibits only *conviction or sentence* under an *ex post facto* law, and not the *trial* itself.

The Honorable Court stated: "In this context it is necessary to notice that what is prohibited under article 20 is only conviction or sentence under an ex post facto law and not the trial thereof. Such trial under a procedure different from what obtained at the time of the commission of the offence or by a court different from that which had competence at the time cannot ipso facto be held to be unconstitutional. A person accused of the commission of an offence has no fundamental right to trial by a particular court or by a particular procedure, except in so far as any constitutional objection by way of discrimination or the violation of any other fundamental right may be involved."

This distinction is crucial for the transition to new criminal laws. Even if an offence was committed under the IPC, the trial can be conducted under the new BNSS, provided the new procedure is fair and not discriminatory.

1.6 The Amelioration Doctrine: Rattan Lal and Its Exceptions

The only exception to the rigor of Article 20(1) is for laws that are beneficial or ameliorative to the accused. In **Rattan Lal v. State of Punjab**, AIR 1965 SC 444, the honorable Supreme Court held that if a new law reduces the punishment for an offence, it can be applied retrospectively to cases pending trial. This is rooted in the principle of beneficent construction .

The rationale is that Article 20(1) protects accused persons from greater punishment; it does not prevent them from receiving the benefit of reduced punishment. However, as held in **Mohan Lal v. State of Rajasthan**, (2015) 6 SCC 222, this does not apply to laws that increase punishment—for such laws, the punishment prevalent on the date of the offence governs.

1.7 Judicial Interpretation Through the Decades

The Supreme Court has consistently upheld and elaborated the protections of Article 20(1) through numerous decisions:

Case	**Year**	**Principle Established**
Rao Shiv Bahadur Singh	1953	Prohibition applies to conviction/sentence, not trial procedure
KedarNath Bajoria	1953	Enhanced punishment cannot apply retrospectively
Rattan Lal	1965	Ameliorative laws can apply retrospectively
Maru Ram v. Union of India	1980	Article 20(1) encompasses principle against retrospective penalty enhancement
Mohan Lal	2015	Rattan Lal exception limited to reduction in punishment

In **Maru Ram Etc. v. Union of India**, (1980) AIR 2147, the Court observed that Article 20(1) also encompasses the principle that penalties for an offence should not be retrospectively increased beyond what existed at the time of the offence.

1.8 Relationship with Other Constitutional Provisions

Article 20(1) does not operate in isolation. It forms part of the "golden triangle" of fundamental rights along with Article 21 (right to life and personal liberty) and Article 22 (protection against arbitrary arrest and detention).

The Supreme Court in **Maneka Gandhi v. Union of India**, (1978) 1 SCC 248, established that Articles 14, 19, and 21 must be read together. Any procedure under Article 21 must be just, fair, and reasonable. This integrated approach applies equally to criminal procedure, reinforcing the protections of Article 20(1).

PART II: SECTION 6 OF THE GENERAL CLAUSES ACT, 1897 – THE STATUTORY CONDUCTOR.

2.1 Historical Context and Legislative Intent

The General Clauses Act, 1897 was enacted to standardize interpretation and provide uniform rules for the construction of Central Acts and Regulations. Section 6 specifically addresses the effect of repeals, embodying the principle that repeal of a statute should not wipe out legal consequences of actions taken while that statute was in force.

The provision reflects the legislative intent that unless Parliament clearly expresses a contrary intention, the repeal of an Act should not:

- Affect past transactions under the repealed Act
- Undo things duly done under the repealed Act
- Destroy rights accrued or liabilities incurred under the repealed Act.

2.2 Anatomy of Section 6: The Sixfold Protection

Section 6 of the General Clauses Act, 1897 states that where any Central Act repeals any enactment, then, unless a different intention appears, the repeal shall not:

Clause	Protection	Explanation
(a)	Revival	Shall not revive anything not in force at the time of repeal
(b)	Previous operation	Shall not affect previous operation of repealed Act or anything duly done or suffered thereunder
(c)	Accrued rights	Shall not affect any right, privilege, obligation, or liability acquired, accrued, or incurred under repealed Act
(d)	Incurred penalties	Shall not affect any penalty, forfeiture, or punishment incurred in respect of any offence committed against repealed Act
(e)	Investigations and proceedings	Shall not affect any investigation, legal proceeding, or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture, or punishment
(f)	Continuation of proceedings	Any such investigation, legal proceeding, or remedy may be instituted, continued, or enforced, and any such penalty may be imposed as if the repealing Act had not been passed

2.3 "Unless a Different Intention Appears": The Judicial Test

The phrase "unless a different intention appears" is crucial. In **State of Punjab v. Bhajan Kaur**, (2008) 12 SCC 112, the Supreme Court elaborated on this test:

"When there is a repeal and simultaneous re-enactment, Section 6 of the GC Act would apply to such a case unless contrary intention can be gathered from the repealing Act. Section 6 would be applicable in such cases unless the new legislation manifests intention inconsistent with or contrary to the application of the section. Such incompatibility would have to be ascertained from all relevant provisions of the new Act."

The Honorable Court further held that the object of repeal and re-enactment is to obliterate the repealed Act and to get rid of certain obsolete matters. However, the objective of Section 6 is to ensure protection of any right or privilege acquired under the repealed Act. The only exception is legislative intention to the contrary.

2.4 Repeal and Re-enactment: The Bhajan Kaur Principle

Bhajan Kaur established that when there is repeal and simultaneous re-enactment, Section 6 applies unless the new legislation manifests an intention inconsistent with or contrary to its application. The Court must examine all relevant provisions of the new Act to determine such incompatibility.

This principle is directly applicable to the transition from IPC to BNS, as BNS is a repeal and re-enactment of criminal law. The saving clause in Section 358 BNS must be examined to determine whether it indicates a different intention.

2.5 Distinction Between Repeal, Omission, and Amendment

In **M/s Shree Bhagwati Steel Rolling Mills v. Commissioner of Central Excise**, (2016) 3 SCC 643, the Supreme Court examined the distinction between repeal and omission. The Court held that an "omission" would amount to a "repeal" for the purpose of Section 24 of the General Clauses Act, and since the same expression "repeal" is used in both Section 6 and Section 24, omissions are included within the meaning of repeal.

This is significant because Section 358 BNS uses the term "repeal" with respect to the IPC, and Section 531 BNSS uses it with respect to the CrPC.

2.6 Interaction with Special Savings Clauses

When a repealing Act contains its own savings clause, as BNS does in Section 358, the relationship between the general savings under Section 6 of the General Clauses Act and the special savings must be determined. Section 358(4) BNS expressly clarifies this relationship:

"(4) The mention of particular matters in this section shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 with regard to the effect of repeals."

This provision makes it clear that Section 358 supplements, rather than supplants, Section 6 of the General Clauses Act. The specific savings in Section 358 are without prejudice to the broader application of Section 6.

PART III: THE NEW CRIMINAL LAWS – A PARADIGM SHIFT

3.1 Philosophical Underpinnings of the Bharatiya Nyaya Sanhita, 2023

The BNS, along with BNSS and BSA, represents a comprehensive overhaul of India's criminal justice system. The stated objectives include:

- Moving away from colonial-era laws
- Streamlining and consolidating provisions
- Introducing technology-enabled justice delivery
- Balancing reformative and deterrent approaches to punishment
- Protecting vulnerable sections of society
- Addressing contemporary forms of crime

3.2 Structural Changes in Punishment Patterns

BNS has streamlined provisions, reducing from 511 sections in IPC to 358 sections. This has been achieved by :

- Consolidating similar provisions (e.g., Section 317 BNS consolidates all stolen property provisions from Sections 410-414 IPC)
- Grouping inchoate offences (attempt, abetment, conspiracy) together in Chapter IV
- Bringing all offences against women and children under Chapter V

3.3 Introduction of Community Service as a Punishment

For the first time in India, community service has been introduced as a punishment under Section 4(f) of BNS. This reflects a reformative approach to minor offences. Currently, community service is prescribed for six offences :

Offence	**BNS Section**
Public servant unlawfully engaging in trade	Section 202
Non-appearance in response to proclamation	Section 209
Attempt to commit suicide to compel exercise of lawful power	Section 226
Petty theft (property less than ₹5,000, first offence, property restored)	Section 303(2)
Misconduct in public by drunken person	Section 355
Defamation	Section 356

3.4 Enhanced Punishments: A Comparative Analysis

BNS has enhanced punishments for various offences. Below is a comparative table of significant changes :

Offence	**IPC Punishment**	**BNS Punishment**	**Change**
Giving false information to cause public servant	Up to 6 months or fine or both	Up to 1 years or fine or both	Enhanced imprisonment

Offence	IPC Punishment	BNS Punishment	Change
to use lawful power to injure			
Destruction of document to prevent production as evidence	Up to 2 years or fine or both	Up to 5 years or fine or both	Substantially Enhanced
Adulteration of drugs	Up to 6 months or fine or both	Up to 1 years or fine or both	Enhanced
Sale of drug as different drug	Up to 6 months or fine or both	Up to 1 years or fine or both	Enhanced
Absconding to avoid service of summons	Simple imprisonment up to 1 month or fine or both	Simple imprisonment up to 6 months or fine or both	Enhanced

3.5 New Offences and Their Punishment Framework

BNS introduces several new offences with distinct punishment patterns:

New Offence	BNS Section	Punishment
Snatching	304	Imprisonment up to 3 years, fine
Organized crime	111	If death occurs: death or life imprisonment + fine of ₹10 lakh. In other cases: 5 years to life imprisonment + fine of Rs 5 lakh.
Petty organized crime	112	Imprisonment up to 7 years, fine
Terrorist act	113	If death occurs: death or life imprisonment + fine of ₹10 lakh. In other cases: 5 years to life imprisonment + fine of Rs 5 lakh.
Mob lynching (murder based on race, caste, etc. by group of 5+)	103(2)	Death or life imprisonment, fine
Acts endangering sovereignty, unity, integrity of India	152	Imprisonment up to 7 years or life, fine
False or misleading information jeopardizing sovereignty	197(1)(d)	Imprisonment up to 3 years, fine

3.6 Mandatory Minimum Sentencing: A New Approach

BNS introduces mandatory minimum punishment for several offences as a deterrent :

Offence	BNS Section	Mandatory Minimum Punishment
Organized Crime (if death results)	111(2)	**Death** or **Life Imprisonment** (and min. ₹10 Lakh fine)
Organized Crime (no death)	111(3)	**5 Years** imprisonment (up to Life)
Terrorist Act (if death results)	113(2)	**Death** or **Life Imprisonment** (and min. ₹10 Lakh fine)
Terrorist Act (no death)	113(3)	**5 Years** imprisonment (up to Life)
Mob Lynching (Group Murder)	103(2)	**Life Imprisonment** or **Death**
Dacoity	309	**10 Years** Rigorous Imprisonment (up to Life)
Repeat Theft Conviction	305	**1 Year** Rigorous Imprisonment (up to 10 years)
Petty Organized Crime	112	**1 Year** imprisonment (up to 7 years)
Rape of girl under 16	65(1)	**20 Years** imprisonment (up to Life or Death)
Gang Rape of girl under 18	70(2)	**Life Imprisonment** (for remainder of natural life) or **Death**

PART IV: SECTION 358 OF THE BNS – THE TRANSITIONAL BRIDGE

4.1 Textual Analysis of Section 358

Section 358 of the Bharatiya Nyaya Sanhita, 2023, is the master key to understanding the transition of substantive offences. It reads:

358. Repeal and savings.— (1) The Indian Penal Code (45 of 1860) is hereby repealed.

(2) Without prejudice to the provisions of the General Clauses Act, 1897 (10 of 1897), with regard to the effect of repeals, the repeal by this Sanhita of the Indian Penal Code shall not affect—

(a) the previous operation of the Indian Penal Code or anything duly done or suffered thereunder; or

(b) any right, privilege, obligation or liability acquired, accrued or incurred under the Indian Penal Code; or

(c) any penalty, forfeiture or punishment incurred in respect of any offence committed against the Indian Penal Code; or

(d) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if this Sanhita had not been passed.

(3) ... [provisions regarding different dates for different provisions]

(4) The mention of particular matters in this section shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 (10 of 1897) with regard to the effect of repeals.

4.2 Sub-section (2): The Saving Clause in Detail

Sub-section (2) of Section 358 is a verbatim adoption of the principles embodied in Section 6 of the General Clauses Act, but specifically tailored to the repeal of IPC. It ensures:

Clause	Protection	Practical Effect
(a)	Previous operation	Acts done under IPC remain valid

Clause	Protection	Practical Effect
(b)	Accrued rights/liabilities	Rights acquired under IPC are preserved
(c)	Incurred penalties	Punishment for IPC offences can still be imposed
(d)	Proceedings	Investigations and legal proceedings for IPC offences can continue or be newly instituted

4.3 Sub-section (4): The Express Link to Section 6 of the General Clauses Act

Sub-section (4) is crucial. It provides that the specific savings in Section 358(2) are "without prejudice to" and do not "prejudice or affect" the general application of Section 6 of the General Clauses Act. This means :

- Section 6 of the General Clauses Act applies in its entirety
- Section 358 supplements but does not replace Section 6
- If any matter is not covered by Section 358, Section 6 may still provide protection
- The savings under Section 6 are cumulative with those under Section 358

4.4 Legislative Intent Behind the Savings Provisions

The legislative intent behind Section 358 is clear from its language and structure:

1. **Continuity**: The legal order under IPC should not be disrupted
2. **Protection of vested rights**: Rights and liabilities crystallized under IPC should be preserved
3. **Seamless transition**: Investigations and proceedings for IPC offences should continue without interruption
4. **Cumulative protection**: The savings under BNS and General Clauses Act operate together

This aligns perfectly with constitutional mandates under Article 20(1), ensuring that no person is subjected to retrospective criminalization or enhanced punishment.

PART V: SECTION 531 OF THE BNSS – THE PROCEDURAL COUNTERPART

5.1 Textual Analysis of Section 531

Section 531 of the Bharatiya Nagarik Suraksha Sanhita, 2023, deals with repeal and savings of the CrPC, 1973:

531. Repeal and savings.— (1) The Code of Criminal Procedure, 1973 (2 of 1974) is hereby repealed.

(2) Notwithstanding such repeal—

(a) if, immediately before the date on which this Sanhita comes into force, there is any appeal, application, trial, inquiry or investigation pending, then, such appeal, application, trial, inquiry or investigation shall be disposed of, continued, held or made, as the case may be, in accordance with the provisions of the Code of Criminal Procedure, 1973, as in force immediately before such commencement (hereinafter referred to as the said Code), as if this Sanhita had not come into force;

(b) any step or measure taken under the said Code for the trial of a case shall be deemed to have been taken under the corresponding provisions of this Sanhita;

(c) any person in custody immediately before the commencement of this Sanhita shall continue to be in custody under the same terms and conditions as provided under the said Code, until such person is dealt with according to the provisions of this Sanhita.

(3) ... [provisions regarding different dates for different provisions]

(4) The mention of particular matters in this section shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 (10 of 1897) with regard to the effect of repeals.

5.2 Pending Proceedings: The Delhi High Court Interpretation

In **M/s KG Marketing India v. MS Rashi Santosh Soni & Anr.**, 2024:DHC:4887, the honorable Delhi High Court provided the first significant interpretation of Section 531 BNSS.

The case involved an application pending when BNSS came into force on July 1, 2024. Honorable Justice Prathiba M. Singh observed:

"In these proceedings, since the application was pending when the new statutes Bharatiya Nyaya Sanhita, 2023 and Bharatiya Nagarik Suraksha Sanhita, 2023 were enacted, the matter would continue under the erstwhile Code itself. This is also clear from Section 531 of the `Bhartiya Nagrik Sakshya Sanhita which reads.... if, immediately before the date on which this Sanhita comes into force, there is any appeal, application, trial, inquiry or investigation pending, then, such appeal, application, trial, inquiry or investigation shall be disposed of, continued, held or made, as the case may be, in accordance with the provisions of the Code of Criminal Procedure, 1973, as in force immediately before such commencement (hereinafter referred to as the said Code), as if this Sanhita had not come into force".

5.3 Pending Appeals: The Punjab & Haryana High Court Ruling

In **Mandeep Singh v. Kulwinder Singh and Anr.**, Dairy No. 2914/2023, the honorable Punjab and Haryana High Court became the first court to interpret Section 531 BNSS in the context of pending appeals.

Honorable Justice Anoop Chitkara held:

"Section 531 of the Bharatiya Nagarik Suraksha Sanhita, 2023 explicitly specifies that pending appeals shall be disposed of or continued as if the new law had not yet taken effect, following the provisions of CrPC. The petition and the accompanying application seeking an extension of time were filed and registered in the registry of this Court when CrPC, 1973 was in force and were pending on the 1st of July 2024 ... shall have to be adjudicated under S. 401 of the CrPC".

The honorable Court granted the application for condonation of delay and directed that the matter proceed under CrPC.

5.4 Investigations After July 1, 2024: The Rajasthan High Court Clarification

The Rajasthan High Court in **Vijay Sharma & Anr v. State of Rajasthan & Anr** addressed the question of investigations commenced after July 1, 2024 for offences committed before that date.

The Court clarified that although old crimes can be prosecuted under IPC, all procedural steps after July 1, 2024 must follow BNSS. Section 531(2)(a) BNSS provides that any filings and investigations done after July 1 must follow the new rules.

This creates a hybrid approach:

- **Substantive law**: IPC for pre-July 1, 2024 offences
- **Procedural law**: BNSS for all steps taken after July 1, 2024

PART VI: THE RAJASTHAN HIGH COURT PRECEDENT – VIJAY SHARMA & ANR V. STATE OF RAJASTHAN

6.1 Facts of the Case

The case involved a family inheritance dispute. An FIR was filed on July 27, 2024, accusing family members under Sections 420 (Cheating), 406 (Criminal Breach of Trust), 467 (Forgery), 468 (Forgery for purpose of cheating), 471 (Using forged documents), and 120-B (Criminal Conspiracy) of the IPC.

The complaint alleged forgery of a will document and consequent unlawful property transfer. The key factual element: the offences were allegedly committed before July 1, 2024, but the FIR was lodged after the new criminal laws came into force.

6.2 Questions of Law Framed

The High Court framed three pertinent questions:

1. **Can crimes committed before 1st July 2024 still be registered under the IPC?**
2. **If a crime was committed before July 1, and was reported later, should it be registered under the IPC or the BNS?**
3. **Which procedural law applies to an FIR registered after 01.07.2024 for offences committed before this date: the CrPC or the BNSS?**

6.3 Analysis of Section 358 BNS

The Court examined Section 358 BNS and held that crimes committed before July 1, 2024 can still be prosecuted under the IPC, despite its repeal, because of the saving clause in Section 358.

The Court reasoned:

- Section 358(2)(a) preserves the previous operation of IPC
- Section 358(2)(b) preserves rights and liabilities accrued under IPC
- Section 358(2)(c) preserves penalties incurred for IPC offences
- Section 358(2)(d) allows investigation and proceedings for IPC offences to be instituted even after repeal

Therefore, the answer to questions 1 and 2 was:**Offences committed before July 1, 2024 must be registered under the IPC, even if the FIR is lodged after that date**.

6.4 Analysis of Section 531 BNSS

Regarding procedural law, the Court examined Section 531 BNSS and held:

- Section 531(2)(a) provides that pending proceedings continue under CrPC
- However, for new proceedings commenced after July 1, 2024, the procedural steps must follow BNSS
- The phrase "any investigation... pending" in Section 531(2)(a) refers to investigations already commenced before July 1
- For investigations commencing after July 1, BNSS applies

6.5 The Three-Pronged Answer

The Court's comprehensive answer established:

Question	**Answer**
Can pre-July 1, 2024 offences be registered under IPC?	Yes, through Section 358 BNS saving clause
Under which law should such offences be registered?	Under IPC, even if FIR is post-July 1, 2024
Which procedural law applies?	BNSS applies to all procedural steps after July 1, 2024

6.6 Significance as a Precedent

This judgment is significant for several reasons :

1. **First authoritative interpretation**: It is the first High Court judgment interpreting the transitional provisions
2. **Clarity on hybrid approach**: Establishes that substantive and procedural laws may be from different regimes
3. **Practical guidance**: Provides clear answers to questions facing every criminal court
4. **Constitutional compliance**: Ensures Article 20(1) protections by applying IPC substantive law to pre-BNS offences
5. **Precedent value**: Serves as a guide for all courts handling transitional cases

PART VII: THE CONFLUENCE – HARMONIZING CONSTITUTIONAL, STATUTORY, AND TRANSITIONAL PROVISIONS

7.1 The Symphony Metaphor Explained

The transition to new criminal laws can be conceptualized as a symphony with three distinct but harmonious movements :

Movement	Role	Function
Article 20(1) Constitution	The Unwavering Note	Sets immutable rules against retrospective punishment
Section 6 General Clauses Act	The Conductor's Baton	Provides default rules for effect of repeals
Sections 358 BNS & 531 BNSS	The Orchestral Score	Specific transitional provisions for criminal law

7.2 How Article 20(1) and Section 358 BNS Interact

The interaction between Article 20(1) and Section 358 BNS creates complete protection:

Article 20(1) mandates :

- No conviction under law not in force at time of act
- No greater penalty than existed at time of act

Section 358 BNS ensures :

- IPC continues to govern pre-BNS offences
- Penalties under IPC remain applicable
- Proceedings for IPC offences can be instituted even after repeal

Result: Perfect harmony. A person who committed an offence before July 1, 2024 is tried under IPC substantive law with IPC punishments, satisfying Article 20(1).

7.3 How Section 6 of the General Clauses Act and Section 358 BNS Interact

Section 358(4) BNS expressly provides that the specific savings in Section 358 are without prejudice to the general application of Section 6 of the General Clauses Act.

This creates a layered protection:

Layer	Provision	Protection
First Layer	Section 358(2) BNS	Specific savings for IPC offences
Second Layer	Section 6 General Clauses Act	General savings for all repealed enactments
Third Layer	Section 358(4) BNS	Express incorporation of Section 6

If any matter is not covered by the specific savings in Section 358(2), Section 6 of the General Clauses Act may still provide protection.

7.4 The Complete Harmonious Framework

The complete framework for determining applicable law can be represented as:

Step 1: Identify the date of the offence

- If offence committed before July 1, 2024 → IPC substantive law applies (Article 20(1) + Section 358 BNS)
- If offence committed on or after July 1, 2024 → BNS substantive law applies

Step 2: Identify when proceedings commenced

- If proceedings pending on July 1, 2024 → CrPC applies to entire proceedings (Section 531 BNSS)
- If proceedings commenced after July 1, 2024 → BNSS applies to all procedural steps

Step 3: Apply the hybrid rule (for post-July 1, 2024 proceedings regarding pre-July 1, 2024 offences)

- Substantive law: IPC
- Procedural law: BNSS

This framework has been validated by the Rajasthan High Court in *Vijay Sharma*.

PART VIII: COMPREHENSIVE PRACTICAL SCENARIOS FOR THE DISTRICT JUDICIARY

Scenario 1: Offence Committed Pre-BNS, FIR Lodged Post-BNS

Facts: Offence of theft committed on June 15, 2024. FIR lodged on August 10, 2024.

Legal Analysis:

- Date of offence: June 15, 2024 (pre-BNS)
- FIR date: August 10, 2024 (post-BNS)
- Substantive law applicable: IPC (Section 378 IPC) [Article 20(1) + Section 358 BNS]
- Procedural law applicable: BNSS (all steps after July 1, 2024) [Vijay Sharma principle]

Scenario 2: Pending Trial on July 1, 2024

Facts: Trial for IPC offence commenced in March 2024 and is ongoing on July 1, 2024.

Legal Analysis:

- Section 531(2)(a) BNSS: "if, immediately before the date on which this Sanhita comes into force, there is any appeal, application, trial, inquiry or investigation pending, then, such appeal, application, trial, inquiry or investigation shall be disposed of, continued, held or made, as the case may be, in accordance with the provisions of the Code of Criminal Procedure, 1973"
- The entire pending trial continues under CrPC.

Scenario 3: Pending Investigation on July 1, 2024

Facts: Investigation under CrPC commenced in May 2024 and is incomplete on July 1, 2024.

Legal Analysis:

- Section 531(2)(a) BNSS specifically includes "investigation" as a pending proceeding
- The investigation shall be continued under CrPC
- However, any new steps after July 1 technically follow BNSS, but since the investigation is "pending," the safer view is that entire investigation continues under CrPC.

Scenario 4: Pending Appeal on July 1, 2024

Facts: Appeal filed under CrPC in 2023, pending on July 1, 2024.

Legal Analysis:

- Section 531(2)(a) BNSS expressly includes "appeal" as a pending proceeding
- The appeal must be disposed of under CrPC.
- Punjab & Haryana High Court in *Mandeep Singh* confirmed this interpretation.

Scenario 5: New Offence Created Under BNS

Facts: Act of snatching (new offence under Section 304 BNS) committed in May 2024.

Legal Analysis:

- Snatching was not a distinct offence under IPC on the date of commission
- Applying Section 304 BNS would be giving it retrospective effect
- Prohibited by Article 20(1).
- The act, if theft, can be prosecuted under Section 378 IPC

Scenario 6: Offence with Reduced Punishment Under BNS

Facts: Offence committed in 2023 under IPC. BNS now prescribes lesser punishment for analogous offence.

Legal Analysis:

- As per *Rattan Lal v. State of Punjab*, ameliorative laws reducing punishment can apply retrospectively
- The accused can claim benefit of lesser penalty
- This does not violate Article 20(1); it extends its spirit of fairness

Scenario 7: Offence with Enhanced Punishment Under BNS

Facts: Offence committed in 2023 under IPC. BNS enhances punishment for analogous offence.

Legal Analysis:

- As per *Kedar Nath Bajoria*, enhanced punishment cannot apply retrospectively
- Article 20(1) prohibits greater penalty than existed at time of offence
- IPC punishment applies regardless of BNS enhancement

Scenario 8: Offence Redefined with Different Mens Rea

Facts: Offence under IPC had certain mental element. BNS redefines same offence with slightly different *mens rea*.

Legal Analysis:

- Critical question: Is this a new offence or the same offence with redefined elements?
- Article 20(1) protects against conviction for acts that were not offences when committed
- If *mens rea* requirement is substantially different, applying BNS to pre-BNS acts may violate Article 20(1)
- Court must examine whether the act as committed would constitute offence under both definitions

Scenario 9: Procedural Changes Affecting Pending Matters

Facts: BNSS introduces provision limiting adjournments to two. Trial pending under CrPC.

Legal Analysis:

- Section 531(2)(a) BNSS explicitly provides that pending trials continue under CrPC
- The new procedural rule does not apply to this pending trial
- However, for trials commencing after July 1, 2024, BNSS applies even for IPC offences

Scenario 10: Multiple Offences Spanning the Transition Date

Facts: Continuing offence or series of offences committed partly before and partly after July 1, 2024.

Legal Analysis:

- Each offence must be examined based on its date of commission
- For continuing offences, courts typically apply law in force at conclusion of continuing act
- For series, separate charges under IPC and BNS may be appropriate

Scenario 11: Economic Offences Under the New Regime

Facts: Economic offence committed pre-BNS but BNS has reorganized provisions relating to economic offences.

Legal Analysis:

- BNS has consolidated provisions relating to stolen property, cheating, etc.
- The substantive law applicable remains IPC for pre-BNS acts
- Courts must apply corresponding IPC provisions, even if BNS has renumbered.

Scenario 12: Organized Crime and Terrorist Acts

Facts: Act committed pre-BNS that would now constitute organized crime under Section 111 BNS or terrorist act under Section 113 BNS.

Legal Analysis:

- Organized crime and terrorist acts are new offences under BNS
- These were not offences under general criminal law (IPC) prior to BNS
- Applying BNS to pre-BNS acts would violate Article 20(1)
- May be prosecutable under special laws (MCOCA, UAPA) if applicable

Scenario 13: Community Service as a Sentencing Option

Facts: Offence committed pre-BNS but trial post-BNS. BNS introduces community service for certain petty offences.

Legal Analysis:

- If community service is a new, less severe form of punishment, it may be ameliorative
- Following *Rattan Lal*, ameliorative provisions can apply retrospectively
- Court may consider community service if it would have been available under BNS for analogous offence.

Scenario 14: Summary Trial Provisions

Facts: BNS expands summary trial to offences involving property up to ₹20,000. Offence committed pre-BNS with property value ₹15,000.

Legal Analysis:

- Summary trial is procedural, not substantive
- As per *Rao Shiv Bahadur*, procedural changes can apply to pending and new trials
- The new summary trial provisions in BNSS would apply if trial commences after July 1, 2024
- However, if trial was pending on July 1, 2024, it continues under CrPC

Scenario 15: Limitation Period Changes

Facts:BNSS has changed certain limitation periods. Offence committed pre-BNS, prosecution commenced post-BNS.

Legal Analysis:

- Limitation is procedural, but has substantive implications
- General rule: procedural changes apply prospectively
- However, if new limitation period has expired, applying it to revive a barred claim may violate Article 20(1)
- Courts must examine whether right to plead limitation had accrued under old law.

PART IX: THE JUDICIAL TOOLKIT – A PRACTICAL GUIDE

9.1 The Two-Step Inquiry

When any criminal matter comes before the court during this transition, the judicial officer must conduct a two-step inquiry:

Step 1: Determine the Applicable Substantive Law (The "What")

Ask: *When was the act committed?*

- If before July 1, 2024 → IPC applies (Article 20(1) + Section 358 BNS)
- If on or after July 1, 2024 → BNS applies

Step 2: Determine the Applicable Procedural Law (The "How")

Ask: *Was the proceeding pending on July 1, 2024?*

- If pending on July 1, 2024 → CrPC applies to entire proceeding (Section 531 BNSS)
- If commenced after July 1, 2024 → BNSS applies to all procedural steps.

9.2 Flowchart for Determining Applicable Law



9.3 Quick Reference Chart for the Bench

Offence Date	**Proceeding Status on 01.07.2024**	**Substantive Law**	**Procedural Law**	**Legal Basis**
Pre-BNS	Pending Investigation	IPC	CrPC(entire investigation)	S. 531 BNSS
Pre-BNS	Pending Trial	IPC	CrPC (entire trial)	S. 531 BNSS
Pre-BNS	Pending Appeal	IPC	CrPC (appeal)	S. 531 BNSS + *Mandeep Singh*
Pre-BNS	Not yet commenced	IPC	BNSS	S.358 BNS +*Vijay Sharma*
Post-BNS	N/A	BNS	BNSS	N/A

9.4 Checklist for Judicial Officers

At the time of taking cognizance:

- Determine date of offence from police report/complaint
- Determine whether proceeding was pending on 01.07.2024
- Record findings on applicable substantive law (IPC/BNS)
- Record findings on applicable procedural law (CrPC/BNSS)
- Ensure accused is informed of applicable law

At the time of framing charge:

- Ensure charges are under correct substantive law (IPC for pre-BNS offences)
- Verify that no new BNS offence is applied retrospectively
- For continuing offences, ensure appropriate division between pre and post-BNS periods

During trial:

- Apply procedural law correctly (CrPC for pending proceedings, BNSS for new proceedings)
- Ensure compliance with new BNSS provisions for post-July 1, 2024 proceedings

At the time of judgment and sentencing:

- Conviction to be under correct substantive law (IPC for pre-BNS offences)
- Consider ameliorative BNS provisions for sentencing
- Ensure no enhanced BNS punishment applied retrospectively
- For community service, verify availability of infrastructure and supervision mechanism

PART X: EMERGING JURISPRUDENCE AND FUTURE DIRECTIONS

10.1 Early High Court Interpretations

Rajasthan High Court in Vijay Sharma (October 2024) :

- Established the hybrid approach: IPC for pre-BNS offences, BNSS for post-July 1, 2024 procedures
- Clarified that FIRs for pre-BNS offences can be registered under IPC after July 1, 2024
- Set precedent for the transition

Delhi High Court in KG Marketing (July 2024) :

- Interpreted Section 531 BNSS regarding pending applications
- Held that pending proceedings continue under CrPC
- Emphasized the saving clause for pending matters

Punjab & Haryana High Court in Mandeep Singh (July 2024) :

- First interpretation of Section 531 BNSS regarding pending appeals
- Held that appeals pending on July 1, 2024 continue under CrPC
- Applied Section 531(2)(a) to condone delay application

10.2 Issues Awaiting Supreme Court Clarification

Several issues may ultimately require Supreme Court guidance:

1. **Definition of "pending"** : At what stage is an investigation "pending"? When does a trial commence for purposes of Section 531?
2. **Continuing offences**: How to treat offences that began before but continued after July 1, 2024?
3. **Redefined offences**: When does a redefinition create a new offence versus merely modifying an existing one?

4. **Limitation periods**: Do new limitation periods apply retrospectively? If so, to what extent?
5. **Community service infrastructure**: In the absence of guidelines, how should courts supervise community service?
6. **Mandatory minimum sentences**: Can mandatory minimums under BNS apply to pre-BNS offences if they are higher than IPC?

10.3 Potential Constitutional Challenges

The transition may give rise to constitutional challenges:

1. **Article 14 challenges**: If similarly situated accused are treated differently based solely on when their trial commenced
2. **Article 21 challenges**: If new procedures deny fair trial rights or if delays in transition cause prejudice
3. **Article 20(1) challenges**: If courts inadvertently apply BNS substantive provisions to pre-BNS acts
4. **Separation of powers issues**: If executive notification of provisions creates uneven application

10.4 The Road Ahead

As the transition progresses, several developments can be anticipated:

1. **More High Court precedents**: Various High Courts will interpret transitional provisions, potentially creating divergent views requiring Supreme Court resolution
2. **Practice directions**: High Courts may issue practice directions for uniform handling of transitional cases
3. **Legislative clarifications**: Parliament may amend provisions if practical difficulties emerge
4. **Infrastructure development**: Community service mechanisms and technological infrastructure under BNSS will develop over time
5. **Training and capacity building**: Judicial academies will develop training modules for handling transitional cases.

CONCLUSION: CONDUCTING THE SYMPHONY

The transition to the new criminal laws is not a discordant break from the past, but a carefully orchestrated evolution. The symphony between the new laws and the constitutional framework is achieved through a clear, methodical judicial approach that respects both the new legislative intent and the eternal, fundamental promises of our Constitution .

Article 20(1) stands as the unwavering note—a constitutional guarantee that no person shall be subjected to retrospective criminalization or enhanced punishment. This protection is absolute and non-negotiable.

Section 6 of the General Clauses Act, 1897 provides the conductor's baton—the default rules ensuring that repeal of a statute does not wipe out legal consequences of actions taken while it was in force. The presumption is in favor of saving rights and liabilities unless a clear contrary intention appears.

Section 358 of the BNS and **Section 531 of the BNSS** are the orchestral scores—specific transitional provisions designed to work in harmony with both the Constitution and the General Clauses Act. They create a seamless bridge between the old and new legal orders.

Early High Court precedents—from Rajasthan, Delhi, and Punjab & Haryana—provide valuable guidance on interpreting these provisions. They establish that:

- Offences committed before July 1, 2024 are governed by IPC substantive law
- Proceedings pending on July 1, 2024 continue under CrPC
- Proceedings commenced after July 1, 2024 follow BNSS procedure
- A hybrid approach applies: IPC substantive law + BNSS procedure for post-July 1, 2024 proceedings regarding pre-BNS offences

For us on the district bench, the guiding light must always be the constitutional protection against arbitrary and retrospective punishment. The General Clauses Act and the savings provisions in the new Sanhitas are the tools Parliament has given us to ensure that while the form of justice evolves, the substantive rights of the individual remain inviolate.

Our role is to be the discerning conductors of this symphony, ensuring that every note—every judgment we deliver—respects both the new legislative intent and the eternal, fundamental promises of our Constitution. In doing so, we ensure that "justice deferred" does not become "justice abnegated," and that the transition to a new criminal justice system fulfills its promise of a more just, efficient, and equitable legal order.

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TABLE OF CASES :-

Case Name	Citation	Relevance
Rao Shiv Bahadur Singh v. State of Vindhya Pradesh	AIR 1953 SC 394	Article 20(1) applies to conviction/sentence, not trial procedure
Kedar Nath Bajoria v. State of West Bengal	AIR 1953 SC 404	Enhanced punishment cannot apply retrospectively
Rattan Lal v. State of Punjab	AIR 1965 SC 444	Ameliorative laws reducing punishment can apply retrospectively
Maru Ram v. Union of India	(1980) AIR 2147	Article 20(1) prohibits retrospective penalty enhancement
Maqbool Hussain v. State of Bombay	AIR 1953 SC 325	Double jeopardy under Article 20(2)
Maneka Gandhi v. Union of India	(1978) 1 SCC 248	Articles 14, 19, 21 read together; procedure must be just, fair, reasonable
Selvi v. State of Karnataka	(2010) 7 SCC 263	Self-incrimination under Article 20(3)
Mohan Lal v. State of Rajasthan	(2015) 6 SCC 222	Rattan Lal exception limited to reduction in punishment
State of Punjab v. Bhajan Kaur	(2008) 12 SCC 112	Section 6 GC Act applies to repeal and re-enactment unless contrary intention appears
M/s Shree Bhagwati Steel Rolling Mills v. Commissioner of Central Excise	(2016) 3 SCC 643	Omission amounts to repeal for purposes of Section 6
Vijay Sharma & Anr v. State of Rajasthan & Anr	(2024) Rajasthan HC	IPC applies to pre-BNS offences; BNSS applies to post-July 1, 2024 procedures
M/s KG Marketing India v. MS Rashi Santosh Soni & Anr	2024:DHC:4887	Pending proceedings continue under CrPC
Mandeep Singh v. Kulwinder Singh and Anr	Dairy No. 2914/2023 (P&H HC)	Pending appeals continue under CrPC

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Articles and Commentaries

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2. P.N. Prakash & Sharath Chandran, "Conundrums in the new criminal laws", Bar and Bench (July 8, 2024)
3. Roshni Ravindra Chandewal, "Reforming Shadows: Criminal Justice in India and the Enduring Safeguards of Articles 20-22", Jurivine (December 2025)
4. Prime Legal, "A New Era in Law: Rajasthan HC's Landmark Ruling on IPC-BNS Transition" (October 2024)

ANNEXURES

Annexure A: Text of Article 20 of the Constitution of India

Article 20. Protection in respect of conviction for offences.— (1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

(2) No person shall be prosecuted and punished for the same offence more than once.

(3) No person accused of any offence shall be compelled to be a witness against himself.

Annexure B: Text of Section 6 of the General Clauses Act, 1897

6. Effect of repeal.—Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not :-

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.

Annexure C: Text of Section 358 of the Bharatiya Nyaya Sanhita, 2023

358. Repeal and savings.— (1) The Indian Penal Code (45 of 1860) is hereby repealed.

(2) Without prejudice to the provisions of the General Clauses Act, 1897 (10 of 1897), with regard to the effect of repeals, the repeal by this Sanhita of the Indian Penal Code shall not affect—

(a) the previous operation of the Indian Penal Code or anything duly done or suffered thereunder; or

(b) any right, privilege, obligation or liability acquired, accrued or incurred under the Indian Penal Code; or

(c) any penalty, forfeiture or punishment incurred in respect of any offence committed against the Indian Penal Code; or

(d) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if this Sanhita had not been passed.

(3) The mention of particular matters in this section shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 (10 of 1897) with regard to the effect of repeals.

Annexure D: Text of Section 531 of the Bharatiya Nagarik Suraksha Sanhita, 2023

531. Repeal and savings.—(1) The Code of Criminal Procedure, 1973 (2 of 1974) is hereby repealed.

(2) Notwithstanding such repeal—

(a) if, immediately before the date on which this Sanhita comes into force, there is any appeal, application, trial, inquiry or investigation pending, then, such appeal, application, trial, inquiry or investigation shall be disposed of, continued, held or made, as the case may be, in accordance with the provisions of the Code of Criminal Procedure, 1973, as in force immediately before such commencement (hereinafter referred to as the said Code), as if this Sanhita had not come into force;

(b) any step or measure taken under the said Code for the trial of a case shall be deemed to have been taken under the corresponding provisions of this Sanhita;

(c) any person in custody immediately before the commencement of this Sanhita shall continue to be in custody under the same terms and conditions as provided under the said Code, until such person is dealt with according to the provisions of this Sanhita.

(3) The mention of particular matters in this section shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 (10 of 1897) with regard to the effect of repeals.