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Revamping the Law of Homicide in India: Legislative Reforms Under the Bharatiya Nyaya Sanhita, 2023 and the Pursuit for Global Justice

Mohan Singh Bijalwan [a], Dr. Umesh Kumar [b]

[a] *Ph.D. Research Scholar, School of Law, Bahra University, Waknaghat, Solan, Himachal Pradesh, 173234, India*
[b] *Assistant Professor, School of Law, Bahra University, Waknaghat, Solan, Himachal Pradesh, 173234, India*

A B S T R A C T

In India, for over 160 years, the Indian Penal Code, 1860 (IPC, 1860) was the law for offences of culpable homicide and murder. The Bharatiya Nyaya Sanhita, 2023 (BNS), which became effective on 1 July 2024, is a major legislative overhaul of India's substantive criminal law. But how far the BNS has truly changed the law of homicide should be carefully evaluated. As per the study BNS is not a "fundamental" change of homicide law but rather continuity and selective reform. The murder and culpable homicide have retained its fundamental nature of protecting current legal jurisprudence. The BNS makes a number of significant amendments to the way and added certain aggravated types of homicide, especially group killings and killings related to organised criminality or to certain other circumstances.

This paper critically examines the legislative changes to homicide under the Bharatiya Nyaya Sanhita, 2023 specifically in section 100, 101, 103 and 105 vis-à-vis the IPC sections particularly 299, 300, 302 and 304. It reviews how the BNS has tackled some of the thematic issues that have long been raised in connection with the culpable homicide and murder, punishment, mob violence, organised criminality, individual culpability and current methods of unlawful killing. The paper also scrutinises the reforms in the light of constitutional principles of equality, fairness, proportionality and right to life as guaranteed under Article 21 of the Indian Constitution. The paper, concludes that legislative reform needs to be followed by uniformity in interpretation of the law by the Indian judiciary, consistency in practice, procedural safeguards and proportionate sentences, if India's homicide law is to make a meaningful contribution in advancing the larger cause of global justice

Keywords: Homicide, Culpable Homicide, Murder, Criminal Law, Bhartiya Nyaya Sanhita, Judiciary

1. Introduction

Law of homicide is the most basic aspects of every system of Criminal justice because it is trying to balance the sanctity of the Human life with the tenets of individual responsibility, proportionality and social interest protection[1]. Homicide is a special case in all offences as the unlawful killing of life is a fundamental right safeguarded by the legal order, and this cannot be restored. Thus, the nature of homicide and its possible punishment must be carefully balanced between protecting society and punishing the individual.

This duty was carried out for over a hundred and a half years by the Indian Penal Code, 1860. Sections 299 and 300 made a distinction between culpable homicide and murder and Sections 302 and 304 prescribed their respective penalties. The intention, knowledge, likelihood of death, bodily injury, sudden provocation and private defence and sudden fight were later the subject of an extensive body of jurisprudence. With the implementation of Bharatiya Nyaya Sanhita, 2023, India has entered a new era of criminal law. The IPC was superseded by the BNS as the major substantive penal law in India and is part of a larger revamp of criminal law, along with their respective reforms of Bharatiya Nagarik Suraksha Sanhita, 2023 and Bharatiya Sakshya Adhiniyam, 2023. The BNS is referred by the Ministry of Home Affairs as one of the three new criminal legislations that comprise the present legislation.

However, the phrase “revamping” needs to be viewed seriously. Substantial transformation does not always equate to Legislative replacement. The BNS’s approach on homicide still uses a large portion of IPC’s conceptual framework. Section 101 is an extension of the primary framework for murder (section 300 of IPC) and section 100 is generally equal to culpable homicide under Section 299 of IPC. Section 103 provides punishment for murder, while section 105 is pertaining to the punishment for culpable homicide that does not constitute murder. Therefore, the question is whether the BNS will produce a more contemporary, reasonable and internation laws of homicide rather than just altering the legislative framework. This paper will investigate that question through an analysis of the law, judicial principles, legislative development and constitutional issues.

1 Negi Advocate, D. C. (2023). Legal Evolution in India: Transitioning from Colonial Legacies to New Frontiers-An In-depth Analysis of Bharatiya Nyaya Sanhita, Bharatiya Nagarik Suraksha Sanhita, and Bharatiya Sakshya Bill in 2023.

2. Evolution of the Law of Homicide from IPC To BNS

The IPC introduced a graduated definition of the concept of unlawful killing. It introduced culpable homicide with three mental elements: "intention to cause death, intention to cause bodily injury which is likely to cause death, and knowledge that the act is likely to cause death"[2]. The IPC also set out to define situations under which culpable homicide would amount to murder. Four clauses in the provision addressed various levels and modes of culpability and five exceptions were provided which diminished some killings from murder to culpable homicide not amounting to murder.[3]

The Supreme Court later evolved this in a complex judicial structure. In State of Andhra Pradesh v. Rayavarapu Punnaiah,[4] it has been explained by the court that "culpable homicide is genus and murder is its species". The judgment gave the conceptual framework for comprehending the relationship of Section 299 and 300. Similarly, the Supreme Court in the case of *Virsa Singh v State of Punjab*[5] has laid down a well-known test under the section 300 "thirdly" which required the accused to show that the specific bodily harm found was "intentionally" caused and that such injury "in the ordinary course of nature" was adequate to cause death.

This basic conceptual structure remains in the BNS. The new bill is thus not an end to IPC jurisprudence. Instead, it establishes a 'statutory framework' within which much of the existing legal reasoning will probably remain valid.

3. Amendment of Existing Provisions with Reference to Murder under the BNS

Bharatiya Nyaya Sanhita, 2023 is a significant milestone in the evolution of the criminal law in India. But its meaning in homicide is not one of complete change of the substantive law, rather it is about continuity, restructuring and selective reform.[6] Section 100 BNS is largely unchanged from the traditional definition of culpable homicide. The provision remains consistent with the concept that, intentional or knowing death is the basis of criminal homicide liability. This continuity is significant since in the light of this distinction between intention and knowledge that graded culpability is established. The BNS is not a solution to the conceptual problem that the mental condition of the accused must be determined. The courts will still have to determine whether the accused meant to cause a death or meant to cause bodily harm which was likely to result in death, or whether he or she simply knew death was likely to result. Thus, the IPC case laws on mens rea will remain important in its interpretation.

The four main circumstances in which culpable homicide turns into murder are substantially replicated in BNS.[7]

- The first relates to an intention to kill.
- The second is related to intending to inflict bodily harm on the specific person that creates the probability for his or her death.
- The third is to have intentionally caused bodily injury which in the normal course of nature would result in death.
- The fourth relates to a dangerous act or acts which in all probability would cause death or bodily injury likely to cause death; and where the perpetrator takes the risk without adequate excuse.

The ongoing existence of these points is evidence of the doctrinal framework of the BNS that has been shaped within section 300 of IPC. However, judicial rulings like Virsa Singh, Rayavarapu Punnayya, Anda v. State of Rajasthan[8], and Pulicherla Nagaraju v. State of Andhra Pradesh[9] will continue to be significant.

4. Punitive Action for Murder

The basic penalty for murder is under Section 103 BNS. The treatment accorded to intentional and aggravated killing remains incredibly harsh, as in the past. There are significant issues pertains to proportionality and life protection under the constitution that warrants examination in the light of continued existence of life imprisonment and death penalty.

The Supreme Court's case law on capital punishment has time and again made it clear that the death penalty ought to be reserved for the "rarest of rare" cases. The sentence procedure must thus be independent of the finding of guilt. Consequently, the BNS should be interpreted in conformity with constitutional mandates relating to the death penalty. The central legislative hurdle is not so much to make punishment for homicide truly harsh as to ascertain the appropriate extent of penal consequences reflect the culpability of the perpetrators.

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2 Indian Penal Code, 1860, s. 299.

3 Id. at s. 300.

4 S*tate of Andhra Pradesh v. Rayavarapu Punnayya*, (1976) 4 SCC 382.

5 *Virsa Singh v. State of Punjab*, AIR 1958 SC 465

6 Rudr, R. S. (2025). Mens-Rea and the Fine Line between Culpable Homicide and Murder: Revisiting Legislative Intent vs. Judicial Activism. *Motherhood International Journal of Research & Innovation*, *2*(02), 117-124.

7 Bharatiya Nyaya Sanhita, 2023, s. 101.

8 AIR 1966 SC 148.

9 (2006) 11 SCC 444.

A modern homicide system, then, ought to differentiate between:

- intentional and purposeful homicide;
- the deliberate causing of death;
- cannibalism, slaying by intent to kill;
- slaughters that happened during a sudden bout of fighting;
- killings in terms of grave and sudden provocation;
- killings resulting from private defence that were more than necessary; and
- accidental or negligent deaths were subject to other regulations.

This kind of differentiation is based on the idea of a "corresponding responsibility," or the idea that moral and legal blameworthiness should correspond.

5. Culpable Homicide Not Amounting to Murder

The subject graded approach to the culpable homicide not amounting to murder is continued in section 105 BNS. This is an important provision as it avoids making the homicide law binary. The law does not transcend the simple differentiation between "murder" and "not murder," but rather it recognises different levels of culpability. Punishment/Punitive action for culpable homicide not amounting to murder under Bharatiya Nyaya Sanhita, 2023 continues to draw the differentiation between intention and knowledge, but effects the sentencing penalties. It imposes imprisonment for life or imprisonment for not less than five years but not exceeding ten years and a fine for culpable homicide not amounting to murder committed with an intention to cause death or intention to cause bodily injury likely to cause death.[10] It makes clear that if the accused's conviction is for the intention-based limb, then the statutory minimum imprisonment is 5 years, which is subject to the availability of an alternative legally permissible sentence, such as imprisonment for life. In the knowledge-based category, Section 105 BNS prescribes a term of imprisonment of either character which may be extended to ten years, along with a fine where the accused knew that the act would be likely to cause death, but lacked the necessary intention.[11] The judge's job, then, is to fix the mental state to a greater degree of accuracy. In this regard, the previous decisions of the Supreme Court are informative. In Rayavarapu Punnayya[12], the Court explained the three-degree conceptual classification of 'culpable homicide' and explained why murder and culpable homicide not being murder is essentially a degree, rather than a kind. The BNS abides by this principle.

6. Mob Lynching and Group Based Homicide: A Significant Legislative Development

A major advancement of the BNS is its specific treatment of groups' murderous acts[13] in some cases. The new aggravated murder statute, which adds to the murder charge "on the premise of religion, race, colour, national origin, class, or gender of another person", is a reaction to the current trends of collective killing. The significance of this development is that the traditional approach to homicide law was at the individual crime level, with attention given mainly to the individual perpetrator and individual mens rea. Group- based violence is an extra challenge with regards to:

- common intention;
- determination of who the individual offenders are;
- collective responsibility;
- evidentiary attribution;
- motive;
- organised participation; and
- vulnerable communities' protection.

That such killings are recognised by the law is an indication that violence is not necessarily a solitary act, but can be collective.

But there must be more than legislation, if justice is to be ensured. It is still crucial to investigate, identify individual participation and to have reliable evidence. It is also necessary to make sure that aggravated liability is not imposed on an accused only because he or she was in a group that was on the scene. The concept of criminal responsibility has to have individual responsibility as an integral part of it.

10 Supra Note 7, at, s. 105.

11 Nigel Walker, Punishment, Danger and Stigma: The Morality of Criminal Justice, Basil Blackwell, Oxford, 1980, pp. 15–20.

12 *Supra note 4.*

13 Supra Note 7, at, s. 103 (2).

7. Organised Crime, Terrorism and the Growing Definition of Serious Homicide

The BNS also addresses issues of organised crime[14] and terrorism.[15] This is a more general law-making trend towards dealing with "complex" types of crimes which can be committed on victims through multiple and systematic acts of violence. These provisions are applicable to homicide as organised criminal enterprises can indirectly or directly be responsible for homicide through coordinated violence. The extension of criminal obligation comes with an added degree of precision, though. In modern criminal law two areas are in competition: Effective repression of serious crime and against over-criminalisation and/or over-generalised criminalisation. This is especially significant as the latter can have noteworthy impacts on personal freedom in the event of any severe punishment. Thus, the application of aggravated offences should be fair and not arbitrary, as required by the constitution.

8. Comparative Analysis of Homicide Law

There is no universal U.S. homicide law. There are different state criminal codes and differences in the elements of murder and manslaughter in both federal and state criminal codes. Murder, as defined in 18 U.S.C. §1111,[16] is an unlawful killing with malice aforethought, which is broken down into first- and second-degree murder, at the federal level. The federal classification of first- and second-degree murder states that culpability is a component of the classification of the offence. Deliberation, premeditation and specified circumstances make the killing a first-degree murder; and other killings that meet malice aforethought make the killing a second-degree murder.[17]

There exists no consistent homicide regime in the United Kingdom. This section concentrates on England and Wales. English murder was evolved from the common law of killing unlawfully with malice aforethought. The important aspects of constructive malice were removed from the definition of murder by the Homicide Act 1957 and the Coroners and Justice Act 2009[18] which meant that if a person committed another felony, this did not provide the mental element required for murder. Modern law, therefore, is more concerned with the accused's intent to kill, or cause grievous bodily harm. Murder is one offence, manslaughter and partial defences the others. R v Vickers[19] determined that it was enough to have an intention to cause grievous bodily harm to commit murder. Attorney General's Reference (No.3 of 1994) [1998] AC 245[20] endorsed the proposition. R v Woollin[21] was one case which raised the issue of whether the defence could infer intention when the risk of the death or serious injury was a "likely" consequence which was known to the defendant. These cases demonstrate the importance of carefully separating purpose, foresight and risk when identifying murderous intent.

The Criminal Code of Canada is the legislation governing homicide in Canada. Homicide is well-defined in section 222[22] and the difference between culpable and non-culpable homicide is explained in this section. Homicide is defined as when someone is killed through direct or indirect cause, it's culpable or non-culpable, and non-culpable homicide is not an offence, but culpable homicide includes murder, manslaughter, or infanticide. The sequence is intended to pull death out of the category of criminal responsibility, and then to distinguish between criminal killing and non-criminal killing. There are two types of murder that are classified as first degree: planned and deliberate murder, and classifies specified statutory categories as planned and deliberate murder. All other murders are second degree murder. Canadian model, in turn, merges a generic mens rea-based basis with a degree structure; the law distinguishes between various forms of the conceptually same offense where these particular forms are sufficiently aggravated. The killing of another person that is not a murder or infanticide is manslaughter. It thus serves as a link between murder and fault. Also, provocation, provided it meets the statutory conditions, will reduce murder to manslaughter within the provisions of section 232.

The German statute is a much harsher one. As per Strafgesetzbuch (StGB) there is a differentiation between Mord and Totschlag under sections 211 and 212. They both involve killing, but Mord needs to have one or more aggravating feature(s), while Totschlag is the “normal” intentional killing that doesn't fall into section 211. Section 213 offers a lesser level of culpability for lesser degrees of Totschlag, such as some acts of killing following serious provocation. There is a separate offence of negligent killing in Section 222. Mord can get life imprisonment under Section 211. The minimum term for Totschlag is set at five years in jail under Sections 212 and life imprisonment is allowed in especially serious cases. There are cases that are not as severe and are allowed for 10 years up to 1 year as specified in section 213. The German structure, therefore, establishes a legal hierarchy of killing according to the quality of the killing and not just distinction between intentional and unintentional killing.[23]

In the comparative examination, the claim that murder and culpable homicide are universally legal issues, but not legal categories, is established. Within the United States, there are a number of degrees and mental-state categories within a decentralised system. England and Wales have one common-law

14 Id at s. 111.

15 Id at s. 113.

16 Legal Information Institute, 18 U.S. Code § 1111 – Murder.

17 Snowden, John Rockwell. "Second Degree Murder, Malice, and Manslaughter in Nebraska: New Juice for an Old Cup." Neb. L. Rev. 76 (1997): 399.

18 481 U.S. 137 (1987).

19 [1957] 2 QB 664.

20 House of Lords, Regina V. Woolin (1997) available at https://publications.parliament.uk/pa/ld199798/ldjudgmt/jd980722/wool.htm (last visited on 9th October, 2026).

21 [1999] 1 AC 82.

22 Criminal Code of Canada (R.S.C., 1985, c. C-46), s 222.

23 Borchert, Simon. "Mord und Totschlag-Reformüberlegungenzu §§ 211, 212 StGB", 1-77. (2016).

offence of murder which is supplemented with manslaughter and partial defences. Canada has a codified hierarchy and has constitutionally enhanced the requirement of mens rea. Germany differentiates Mord from Totschlag by certain aggravating features.

Indian law is in a unique situation. The BNS continues the usual pattern where the more serious offence of culpable homicide exists and the lesser offence of murder is an aggravated offence with statutory exceptions. This distinction model is beneficial because it can be differentiated in a nuanced way without too many new homicide offences appearing. The main difficulty with it is the degree to which judges have to interpret it to keep it from blurring the line between culpable homicide and murder.

There is no comparative evidence basis for bringing any foreign doctrine in as a whole. Rather, it proposes a way forward to define the gradations of mental states, stay focused on the cause, organize partial defences in an objective and subjective manner, and differentiate between classification of offences and sentences. The main comparative point is that the death cannot be separated from a crime, but it does not constitute a crime in and of itself. The key question in the deciding inquiry should always be that of the accused's conduct, the causal contribution, mental state, and legally recognised circumstances which impact culpability.

9. Homicide Law and Global Justice

The Universal Declaration of Human Rights, Article 3 (1948)[24] guarantees the right to life to all people, which is a significant narrativized principle to protect individuals from arbitrary action of the state. The protection has been enshrined in binding international law under Article 6 of the International Covenant on Civil and Political Rights (1966)[25] which makes it clear that no one shall be arbitrarily deprived of life and imposes strict limits on states that continued to have the death penalty. The accountability of the State was further extended by modern international jurisprudence which in considering Article 2 of the European Convention on Human Rights,[26] called for effective institutional mechanisms to investigate, prosecute and hold responsible those committed unlawful deaths.

International criminal law and humanitarian law also developed in parallel, providing a greater scope of protection against unlawful killing, beyond the domestic arena. Deliberate violations of international humanitarian law, such as the killing of civilians and protected persons, are strictly prohibited during an armed conflict, under the Geneva Conventions of 1949[27] and their Additional Protocols. Moreover, the definition of murder as a crime against humanity in the Rome Statute of the International Criminal Court (1998)[28] recognizes that murder is committed as part of an attack against a civilian population is a crime against humanity. Simultaneously, the global community has hard-pressed for a worldwide reduction or eradication of the death penalty through instruments such as the Second Optional Protocol to the ICCPR (1989),[29] leading to the emergence of a worldwide trend to limit or abolish the death penalty and challenging the arguments for deterrence, retribution, human dignity, and rehabilitation.

Homicide laws are one of the main means by which the State can contribute to the protection of the right to life guaranteed by the Constitution of India, Article 21.[30] The Right to Life is considered as the paramount right among all fundamental rights of human being. It states that no person shall be denied access to life or personal liberty except to the procedure established by law. As such, crimes related to the taking of human life are the most serious type of crimes in criminal law. Of these offences, culpable homicide and murder have a special place for both the victim and the moral, as well as social and legal fabric of society.[31] The highest court of the nation has always documented that there is a negative obligation on the State not to take life arbitrarily and a positive obligation to put in place an effective legal mechanism to protect human life. Criminal provisions concerning homicide, therefore, not only have a punitive role, but also have a constitutional role that embodies the sanctity and inviolability of human life and that ensures that criminal responsibility is attached only based on just, fair and reasonable legal principles.

The shift from IPC, 1860 to Bharatiya Nyaya Sanhita, 2023 (BNS) is comparable to this worldwide development. There is no longer a simple definition of homicide in contemporary domestic law; it is no longer simply a definition of crime provided for in the statute. The question of the criminality of a killing and the proper punishment to be imposed has become increasingly subject to constitutional protections, principles of human dignity, culpability and proportional punishment, notions of procedural fairness, and international human-rights principles.

10. Revamp Or Recodification?

The biggest issue[32] to be addressed after the BNS is whether it has truly "revamped" the homicide law. The result is in a middle position.

10.1 Areas of Continuity

24 Universal Declaration of Human Rights, 1948, art. 3.
25 International Covenant on Civil and Political Rights, 1966, art. 6.
26 European Convention on Human Rights, 1950, art. 2.
27 The Geneva Conventions,1949.
28 Rome Statute of the International Criminal Court, 1998, art. 7 (1)(a).
29 Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR), 1989.
30 The Constitution of India, 1950, art. 21.
31 Ratanlal & Dhirajlal, The Indian Penal Code 1541 (36th edn., LexisNexis, Gurgaon, 2023).
32 Robinson, P. H. (1979). A brief history of distinctions in criminal culpability. *Hastings LJ*, *31*, 815.

The BNS heavily maintains:

- the idea of culpable homicide;
- the differentiation between culpable homicide and murder;
- focus on intention and knowledge as key mental components;
- the four major areas of murder;
- exceptions to murder;
- graded culpability; and
- the core system of punishment.

This implies the intellectual basis of homicide law continues to be largely based on IPC jurisprudence.

10.2 Areas of Reform:

Meanwhile the BNS presents or refocuses the sections related to the current-day phenomenon of crime like organised crime and group-based killing. The legislative reform can thus be called selective modernisation and not a complete reconstruction. The BNS's reformist goals and the continuity with the previous legal regime also appear in the academic discussion on the BNS. This is important to note here that if the numbering of the statute has changed, it may not automatically be deemed a new legal philosophy.

11. Challenges In Implementation

Whether the homicide reform is successful in reducing homicide rates depends on implementation.

- Investigative capacity: Preserving the scene, conducting the forensic examination, the autopsy, and the analysis and reconstruction of scenes involving homicide are essential to solving the case.
- Forensic infrastructure: Modern Homicide Adjudication relies much more heavily on DNA, CCTV footage, mobile-phone records and forensic pathology.
- Judicial consistency: The philosophy and knowledge behind them can result in varying answers. Higher courts must, therefore build up a coherent BNS jurisprudence.
- Sentencing consistency: Sentencing should reflect fault and not just the degree of emotional seriousness of the offence.
- Defence of the accused: The enforcement of the severe homicide provisions should not undermine the presumption of innocence or the burden of proof on the prosecution.
- Victim-centred justice: Within a criminal justice system, victims and families have to be meaningfully involved, informed and receive proper compensation.

12. Proposals for Additional Improvements to the System

The below changes can improve the working of the BNS Homicide Law:

- Develop authoritative judicial guidelines: The Supreme Court needs to work out a consistent methodology that can be used to decide when intention, knowledge and when exceptions on Sections 100 & 101 of BNS apply and when they do not.
- Secondly, enhance forensic investigations: All serious homicides must be followed up with prompt forensic examination with trained personnel and modern forensic laboratory set-ups.[33]
- Thirdly, encourage uniformity of sentencing: Standards or structured judicial principles might minimize the amount of unexplainable variations between similar cases, without eliminating judicial discretion.
- Fourthly, identify individual from collective responsibility: In the case of group killings, the court must pinpoint the mental state and role of each of the accused.
- Fifth, enhance victim involvement: Communities, including families of homicide victims, should be provided with information in a timely fashion about investigation and trial processes and appropriate access to victim-support mechanisms.

33 Geary, R. V. (1979). *A comparison of murder and culpable homicide, 1973-1976.* University of Glasgow (United Kingdom).

- Sixthly, maintain constitutional protection: The aggravated homicide provisions must always be in accordance with the requirements of Article 14 and 21.
- Seventhly, provide the opportunity for comparative legal research: Indian courts and lawmakers should keep abreast of developments in comparative criminal law, but not mechanically and without taking into account the differences in the Indian constitutional and social environment.

13. Conclusion

The fundamental differentiation between culpable homicide and murder is not really altered. Sections 100, 101 BNS maintain the core structure of the Sections 299, 300 IPC, and the decades of judicial decisions on the notion of intention, knowledge, bodily injury and statutory exceptions remain largely relevant. The BNS also responds to some of the new types of criminality, especially by including provisions on organised crime and terrorism, and on aggravated forms of collective violence. All these are steps towards updating the criminal law to the real world.

However, true reform can't be quantified by the number of provisions that are added or an old legislation being superseded by a new one. The effectiveness of homicide reform can only be assessed by its ability to serve four goals: to save lives, to truly find the culprit, to deliver appropriate punishment, and to ensure that the rights are protected as per the Constitution. Global justice will not be achieved without legislative modernisation. It demands good investigation, trustworthy forensic evidence, uniform judicial interpretation and fair trials, as well as proportional sentences, and equal protection for victims and accused persons.

While the BNS is a statutory basis for this process, it will ultimately be up to courts, investigators, prosecutors and other institutions to convert the legislation into practice. The Indian law of homicide is therefore not just moving from IPC to BNS, it is now taking a step further; the challenge now is to turn the statutory reforms into substantive justice.