

BHARATIYA NYAYA SANHITA 2023

Presented by

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INTRODUCTION

- "*Without criminal law, there is no order. Without order, there is no justice. Without justice, there is no society.*" - Henry M. Robert III.
- The Indian Penal Code, 1860, the colonial legislation uses the word penal which signifies that the main motive or work of this legislation is to *penalize* the person who has done wrong but when we look at the Bharatiya Nyaya Sanhita, 2023 it uses the word Nyaya which signifies a paradigm or ideological shift in the purpose act does not only fulfill the purpose of penalizing the wrongdoer but its main motive is to give Nyaya that is justice to the victim who has been wronged.

- The Bharatiya Nyaya Sanhita (BNS), 2023, set to replace the Indian Penal Code (IPC), 1860 was recently passed in the Parliament. It is part of the government's efforts at a complete overhaul of the country's criminal justice system.
- Earlier, the Ministry of Home Affairs in 2020 had constituted a committee headed by Ranbir Singh to review criminal law. The mandate of the committee was to *'recommend reforms in the criminal laws of the country in a principled, effective and efficient manner, which ensures the safety and security of the individual, the community and the nation; and which prioritizes the constitutional values of justice, dignity and the inherent worth of the individual'*.

- The Bharatiya Nyaya Sanhita Bill, 2023 was presented in the Lok Sabha on August 11, 2023, with the primary goal of overhauling the existing Indian Penal Code, 1860, as well as two other bills aimed at replacing the Code of Criminal Procedure, 1973, and the Indian Evidence Act, 1872. This summary outlines the key modifications proposed in the IPC by the Bill, referring to "*Clauses*" in the Bill as "*Sections*" for clarity.
- In essence, the Bill proposes significant changes, including streamlining certain IPC provisions to reduce its length (356 sections compared to the current 511 sections). It also introduces new offenses such as hate speech and terrorism. Additionally, the Bill redefines sedition, categorizing it as acts that endanger the sovereignty, unity, and integrity of India. This comprehensive update aims to make the legal framework more concise and address contemporary issues by incorporating new offenses and refining existing ones.

WHAT WAS THE NEED?

- Shedding 160-year-old colonial baggage.
- Aligning criminal law with Indian values and ethics
- Tackling Emerging Crimes
- Combating terrorism, organized crime, and cybercrime more effectively.
- Addressing new forms of social and economic offenses
- Modernizing Outdated Provisions
- Updating archaic language and concepts
- Reflecting contemporary social realities and technological advancements.
- Emphasis on victim protection, compensation, and rehabilitation

CHANGES INDIAN PENAL CODE TO BHARATIYA NYAYA SANHITA

- BNS contains 358 sections in 20 chapters while IPC has 511 sections in 23 chapters.
- 20 new offences have been added in the Bharatiya Nyaya Sanhita (BNS)
- 19 provisions that existed in IPC have been deleted
- In 33 offences the punishment of imprisonment has been increased

NEW OFFENCES

1) Mob lynching: It codifies offenses linked to mob lynching and hate-crime murders, for cases when a mob of five or more individuals commits murder based on factors such as race, caste, community, language, place of birth, or personal belief. The provision has punishment that extends from life imprisonment to death. (Sec- 101 of BNS)

2) Organized Crime: For the first time, tackling organized crime is brought under the realm of ordinary criminal law. There are special state legislations for organized crime syndicates, such as Maharashtra's MCOCA, 1999. These special laws prescribe vast powers of surveillance and relax standards of evidence and procedure in favor of the state, which is not found in ordinary criminal law. (Sec 111 of BNS)

3) Terrorism: The BNS brings terrorism under the ambit of ordinary criminal law. (Sec 113 of BNS)

4) Attempt to Suicide: The BNS introduces a new provision that criminalizes "whoever attempts to commit suicide with the intent to compel or restrain any public servant from discharging his official duty". This provision could be invoked to prevent self-immolations and hunger strikes during protests. (Sec 226 of BNS)

DELETIONS

- 1) Unnatural Sexual Offences: Section 377, which criminalized homosexuality among other "unnatural sexual activities, has been repealed under the BNS. (*Case-Navtej Singh Johar v. Union of India*).
- 2) Adultery: Section 497 The offense of adultery, which was struck down by the Supreme Court as unconstitutional in 2018, has been omitted under the BNS. (*Case-Joseph Shine V/S Union Of India*).
- 3) Thugs: The IPC under Section 310 criminalizes those who have been "habitually associated with committing robbery or child-stealing" and labels them a thug. This provision is criticized for attaching colonial notions of criminality to certain tribes. The BNS has fully omitted this provision.

POSITIVES

1) Gender neutrality:

- While rape laws continue to operate only for women, the BNS has tweaked some other laws, especially those dealing with children, to bring gender neutrality.
- For adults, the offense of outraging the modesty of women (354A of the IPC) and voyeurism (354C) now has gender neutrality for the accused under the BNS, which means that women can also be booked under the law.

2) Fake news:

- The BNS introduces a new provision under IPC Section 153B which deals with hate speech, criminalizing publishing false and misleading information.

3) Sedition: The BNS introduces the offense of sedition under a new name and with a wider definition. Apart from a name change from '*rajdroh*' to '*deshdroh*', the new provision adds the following: aiding through financial means, acts of "*subversive activities*", and those encouraging "*feelings of separatist activities*" (Sec 152 of BNS).

4) Community Service: The BNS also calls for community service as a punishment for petty offenses, which will be the part of penal code for the first time.

PROBLEMS

1) Ambiguity: For instance, it omits the offence of sedition. However, a new offence has been added that criminalizes exciting secession, armed rebellion, subversive activities or encouraging separatist feelings, without defining them. The framing of this provision is very similar to that of sedition and can be misused by the government to curb dissent.

2) No break from colonial legacy: It makes minimal progress in this objective. It continues to rely on long-term imprisonments and the death penalty adding and increasing mandatory minimum sentences for certain offences, and by retaining vague definitions for offences against the state as well as for defamation

3) Lack of Legislative Scrutiny: The three Bills that replace the body of criminal laws in India were passed by Parliament in its ongoing session where more than 140 MPs were suspended.

4) Lack of Transformational Changes: Except the reordering of the sections, much of the language and contents of the original laws have been retained. The new codes do not envisage any path-breaking change.

5) Provision on Terrorism: It is being questioned whether '*terrorism*' should have been included in the general penal law when it is punishable under special legislation. Experts argue that grave charges such as terrorism should not be invoked regularly.

6) Marital Rape not Included as a Criminal Offence: The provision legalizing marital rape has been retained.

WAY FORWARD

- 1) Modernization and Clarity: Further update the BNS to reflect contemporary societal norms and values. Ensure that laws are clear, concise, and easily understandable by both legal professionals and the general public.
- 2) Victim-Centric Approach: Strengthen provisions that protect victims' rights and ensure their access to justice. This includes better support systems, compensation, and participation in legal proceedings.
- 3) Focus on Rehabilitation: Emphasize rehabilitative justice and ensure the reintegration of offenders into society alongside punitive measures. Promote alternative sentencing options, especially for non-violent offenses, to reduce overcrowding in prisons and provide a chance for reform.

4) Technology Integration: Incorporate technology to streamline legal processes, improve investigation techniques, and enhance evidence collection. This could include digitization of records, use of forensic technology, and modernizing court procedures.

5) Public Awareness and Education: Conduct public awareness campaigns and educational programs to inform citizens about their rights and responsibilities within the criminal justice system.

6) Consultation and Stakeholder Involvement: Encourage active participation from various stakeholders, including legal professionals, law enforcement agencies, NGOs, and affected communities, in the reform process to ensure inclusivity and diverse perspectives.

CONCLUSION

- In conclusion, the Bharatiya Nyaya Sanhita (BNS), 2023 represents a groundbreaking and transformative overhaul of the legal framework in India. With its comprehensive revisions and noteworthy additions, the law not only replaces the outdated Indian Penal Code, 1860 but also introduces a more organized and efficient structure to address contemporary challenges. The BNS streamlines legal provisions, consolidates scattered laws, and introduces new offenses, reflecting a commitment to clarity, fairness, and adaptability.
- The key provisions and changes in the BNS highlight a shift towards modernization and responsiveness to societal needs. Notably, the inclusion of community service as a form of punishment demonstrates a forward-looking approach, aiming not just at punitive measures but also at fostering positive contributions to society.

- The new Bharatiya Nyay Sanhita Law 2023 represents a significant overhaul of the Indian Penal Code, aiming to align criminal law with the contemporary needs of society. The legislative initiative, introduced by Home Minister Amit Shah, reflects the culmination of efforts by a committee led by Prof Dr. Ranbir Singh. The comprehensive changes in the law address various aspects of criminal law, ranging from sedition and conspiracy to offenses against women, children, and the LGBTQ community.
- The removal of the term "*sedition*" from the new law has garnered attention, yet concerns have been raised about the potential expansion of powers in dealing with activities that threaten the state's unity and diversity. The introduction of offenses such as terrorism and organized crime aims to modernize the legal framework, but critics argue that ambiguous language may inadvertently allow authorities to suppress political dissent.

- The BNS, 2023 addresses various aspects, from offenses against women, children, and murder to tackling organized crime, terrorism, and exploitation. It removes outdated terms, introduces gender-neutral provisions, and aligns with evolving societal norms. The elimination of the offense of 'attempt to commit suicide' in favor of a more nuanced approach underscores the evolving understanding of mental health issues.
- Moreover, the BNS, 2023 makes a bold move by removing the section related to sedition, emphasizing the protection of freedom of speech and expression while introducing a new provision to combat acts endangering the sovereignty, unity, and integrity of India. These changes demonstrate a balance between safeguarding fundamental rights and preserving national interests.
- Overall, the Bharatiya Nyaya Sanhita, 2023, embodies a progressive and comprehensive legal framework, reflecting a commitment to justice, fairness, and the evolving needs of society. It stands as a testament to the nation's dedication to shaping a legal system that is both robust and responsive to the challenges and values of the contemporary era.

Thank you
