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Bharatiya Nyaya Sanhita - A Paradigm Shift From The Indian Penal Code

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Abstract

India's Criminal Justice system has undergone tremendous changes over a period of time going from ancient period till date. The colonial period IPC for India was a remarkable piece of law for its time. The IPC's core stayed the same despite numerous changes over the years and many of its portions became outdated due to various developments over a period of time such as rapidly evolving society, new types of crime, and technological breakthroughs. There are several sections in IPC which penalised for acts that have become redundant, while new crimes such as cybercrime and organized terrorism, were added in IPC. Some of the sections of the IPC overlapped with other laws, leading to confusion and inefficiencies in law enforcement. Despite criticisms of its colonial roots and alleged deficiencies in handling contemporary concerns, the IPC has remained the cornerstone of Indian criminal law.

The Bharatiya Nyaya Sanhita 2023 is a new law to transform the colonial Indian Penal Code and address various challenges due to advancement in technology, change in perception of crimes, judgments of the Supreme Courts legalizing certain offences in IPC and ineffective punishments in existing IPC. Some of the offences are repealed and some new offences find place in BNS. The reforms specifically target serious offenses such as terrorism, corruption, mob lynching, and organized crime, while also abolishing the contentious sedition law that has often been wielded to stifle dissent and infringe on civil liberties. The legislation places a strong emphasis on victim support, providing comprehensive compensation and rehabilitation services to those affected by crime. It also aims for the protection vulnerable groups such as women, children, transgender and ensuring their rights are upheld within the justice system.

Keywords: Indian criminal justice system, The Bharatiya Nyaya Sanhita 2023, Indian Penal Code 1860, Mob lynching, Community services.

Introduction

Indian Criminal Justice System has undergone various developments since the ancient period. However significant reforms were brought during the colonial period. In 1834, the East India Company established the Indian Law Commission with the objective of having a comprehensive Penal Code. The commission was led by Lord Thomas Macaulay, a British colonialist and Member of Parliament. This commission's efforts culminated in the development of the Indian Penal Code (IPC). Drafting the IPC was one of the essential task which then came to be passed in 1860. The Preamble of the IPC states very clearly its objective to establish a uniform penal code for India, wherein the main objective was punishment of crimes having a punitive approach

The Bharatiya Nyaya Sanhita (BNS) Bill was introduced in the Lok Sabha in August 2023, paving the way for the IPC's eventual replacement. The BNS recommends a number of reforms, including community service for minor offences, increased protections and penalties for crimes against women and children, and gender-neutral legislation. It also addresses developing challenges like as terrorism and organized crime by enacting new offences with severe penalties. Furthermore, the BNS lays emphasis on the reformatory theory of punishment, which prioritizes rehabilitation over retribution. This study is with the objective to make a comparative and critical analysis of the Bharatiya Nyaya Sanhita with the Indian Penal Code.

The objective for enactment of Bharatiya Nyaya Sanhita, 2023

In today's scenario wherein the society wherein there are changes in the concept of morality, crime perception scientific and technological advancement socio-cultural norms etc the Indian Penal Code (IPC) is not in pace with the changing modern society. Due to these developments in the society the IPC is losing its relevance and there are several gaps which needs either major amendments or replacement of IPC. Since its conception, the IPC has undergone amendments, but comprehensive updates were not done Hence reforming and updating the IPC is the need of the hour. As such the enactment of BNS is with the following objectives:

- Removing colonial legacy and enacting laws according to Indian socio-political situations.
- Modernizing provisions for new-age crimes like cyber fraud, organized crime, and terrorism, mob lynching etc.
- To ensure speedy justice by strengthening the rights of the victims.

Structural differences between IPC and BNS

There are certain noteworthy structural differences between the IPC and BNS. The IPC was enacted in 1860 whereas the BNS in 2023. The IPC having 511 sections has been categorized into 23 chapters and BNS has 356 sections under 19 chapters. There is no specific provisions in IPC for modern crimes like mob

lynching, terrorism, or economic fraud etc. Moreover the monetary value of punishments in IPC have become obsolete. In BNS there are provisions for modern criminal activities and enhanced monetary value of punishments. The IPC has prescribed punitive nature of punishments where the BNS has place for reformatory approach of punishments such as community service.

Key Reforms through Bharatiya Nyaya Sanhita, 2023

BNS largely retains the IPC's core provisions while introducing new offences, eliminating those declared invalid by courts, and increasing penalties for several offences. Following are the significant reforms through enactment of Bharatiya Nyaya Sanhita.

- **Consolidation of certain provisions**

BNS has consolidated the provisions under IPC, having only 358 sections as compared to 511 sections under the IPC. BNS has consolidated similar provisions or provisions relating to similar offences in one category. Such as, all three inchoate offences, i.e., "attempt", "abetment" and "conspiracy", have been brought together under Chapter IV of the BNS. Earlier, "abetment" and "conspiracy" were covered from Section 109 to 120 and 120A & 120B in the IPC, and "attempt" was under Section 511 of IPC.

- **Scope of Definition enhanced**

In BNS a gender-neutral approach has been adopted to cover any accused against some specific offences. Moreover the BNS, specifically recognizes 'transgender' as a gender alongside 'men' and 'women' under Section 2(10). IPC identified only 'men' and 'women' in reference to the definition attached to the term 'gender' in the code. Thus the scope of the term 'gender' in the code had been extended to transgender which gives effect to the decision of the Supreme Court in *NALSA vs. UOI* (AIR 2014 SC 1863) recognizing the right to self-identification of transgender. Also the definition of the term 'document' now includes electronic and digital records under Section 2(8). Further Section 2(21) defines 'movable property' which includes corporeal or incorporeal.

- **Modernized Language and Definitions**

The BNS has done away with the colonial phrases such as "lunatic person" and "person of unsound mind" with subtle language, such as "person with mental illness" or "having an intellectual disability". "Minor" has been replaced with "child"

- **Gender Neutrality:**

Assault or use of criminal force to woman with intent to disrobe her and Voyeurism has been made gender neutral under Sections 76 and 77 of the BNS, 2023. The offence relating to importation of a person from foreign country has been made gender neutral to cover both boys and girls in Section 141 of the BNS, 2023.

- **Crimes Against Children & Women**

All the offences against women and children have been brought under Chapter V of the BNS. This includes sexual offences, criminal force and assault, marriage-related offences, miscarriage and crimes against children. Categorizing the offences against children and women together under one chapter.

- **Emphasis on Reformatory Theory of Punishment**

IPC had a punitive and deterrent effect of punishment but the emphasis in modern times is the reformation and rehabilitation of the offenders. Hence Community service has been added as a new form of punishment under Section 4 of the Sanhita, reflecting a reformatory and restorative form of justice in cases involving first-time offenders or lighter offences.

- **Extra-Territorial Applicability Extended**

The Bharatiya Nyaya Sanhita, now penalises abetment of offence outside India, for the commission of an offence within India under Section 48 of BNS.

- **Adultery**

The Offence of adultery under Section 497 IPC has been decriminalized under the BNS following the Supreme Court's judgement in *Joseph Shine v. Union of India* interpreting that section 497 of the IPC violates Articles 14, 15, and 21 of the Constitution.

- **Organised Crimes**

New offences of "organised crime" and "petty organised crime" have been introduced under the BNS. This is the first time "organised crime" has been recognised as an offence in a central legislation, which was so far regulated under state legislations.

- **Terrorist Act**

Section 111 of the BNS defines terrorism and the Terrorist Act as offences for the first time in the central legislation.

- **Snatching**

Offence of "theft" has been expanded to include theft of vehicle, theft from vehicle, theft of government property, idol, or icon from a place of worship. Offence of "snatching" has been introduced under Section 304 of BNS. Theft will only amount to snatching if the theft is carried out in a sudden, quick or forcible manner.

- **Sedition**

The offence of "sedition" under 124-A of the Indian Penal Code has been replaced by a broader and more precise definition under Section 152 as "Act endangering sovereignty, unity and integrity of India."

- **Hit and Run**

'Death by negligence' is covered under BNS Section 106(2). A person who causes someone else's death by rash and negligent driving and fails to notify the police or a magistrate promptly after the incident and flees will be penalized with up to 10 years in jail and a fine.

- **Attempt to commit suicide**

The offence of attempt to commit suicide has been removed from the BNS. However, a new section has been added which criminalizes the attempt to commit suicide to compel or restrain exercise of lawful power by a public servant.

- **Mob-Lynching**

Mob-Lynching is an added provision in the BNS under section 103(2). The IPC did not contain a comparable provision relating to mob lynching. It states that each member of a group of five or more people acting together who commit murder on the basis of race, caste or community, sex, place of birth, language, personal beliefs, or any other comparable ground is liable to death or with imprisonment for life and with fine.

Challenges ahead in implementation of BNS

Most of the provisions of BNS are retention of the provisions of IPC. Some are welcome, however some of the offences which are omitted may be detrimental in prevention and control of those acts which are legalised, leaving a huge gap prone to misuse and evasion from accountability against criminality. Some of the changes which are discussed below which are brought in BNS may be difficult in its implementation.

Firstly Community Service has been added as a new form of punishment under **Section 4(f)** in the BNS. However, the Sanhita has neither any provision or reference as to what acts would fall within the definition of this 'community service'.

Secondly in BNS certain offences are gender neutral but when it comes to rape and sexual assault cases, there is no appropriate procedure for obtaining gender neutrality. Gender neutrality in laws concerning rape and sexual assault pertains to the notion that the legal system should recognize that rape can be perpetrated by men, women, and transgender individuals, as well as against these groups. However, both the BNS and IPC classify men as the offenders in cases of sexual assault and rape, while only recognizing women as the victims of such offenses. Section 375 conveys that it is illegal to rape a woman. The Supreme Court's interpretation of Section 377's definition of "intercourse against the order of nature involving any man, woman, or animal" suggests that consensual sex between adults is excluded from this definition. This indicates that sexual relations with an animal are unlawful, just as non-consensual sexual acts with an adult male are. It is to be noted that the POCSO Act of 2012 makes child rape, regardless of gender, a criminal offence.

Thirdly Section 377 was partially struck down by the five-judge bench of the Supreme Court in Navtej Singh Johar vs. UOI [AIR 2018 SC 4321, (2018) 10 SCC 1] Section 377 is not retained by the BNS. This suggests that having sex with an animal or raping an adult man will not be illegal under any circumstances. However, BNS fails to consider these acts as an offence.

Fourthly there have not been any significant changes to the Sedition Law. The colonial era 'sedition' terminology has been removed and Section 152 of the BNS has introduced it in the form of- as acts endangering sovereignty, unity and integrity of India, for which imprisonment for life or up to seven years and fine has been prescribed. The Section 152 expands the scope of the gravity of the offence by including within it the act of also using electronic communication or use of financial means, any 'subversive activities', feelings of 'separatist activities' or endangers sovereignty or unity and integrity of India...

Fifthly the Bharatiya Nyaya Sanhita (BNS), which serves as the overarching criminal law addressing various offences, includes references to certain crimes that are also covered and penalized by existing special laws, resulting in a duplication of legal provisions. For instance, the BNS outlines offences related to 'organized crimes' and 'Terrorism' (Sections 111 to 113). However, these crimes are already addressed by specialized laws that come with their own distinct criminal procedures, as well as rigorous safeguards and necessary procedural expertise. This situation creates an unnecessary overlap and may lead to potential conflicts ahead. Another example is that Unlawful compulsory labor is death under BNS Clause 114 which is also overlaps with the Bonded Labour System (Abolition) Act, 1976.

Suggestions for amendments in BNS

The BNS creates a more contemporary and inclusive legal framework and marks a significant break from the IPC. The BNS might be made more efficient and egalitarian in spite of its beneficial innovations. Important suggestions for enhancing BNS legal reforms include:

1. The gender-neutral approach shall not be limited to sexual offences but shall be extended to offences of domestic violence, harassment, and discrimination. This guarantees equal legal protection and regard for all genders.
2. Limited criminalization of the offence of attempt to commit suicide is against the fundamental right under article 21 of the Constitution, hence it shall be fully criminalized as it was in IPC and in addition shall include criminalization of attempted suicide when it is used to compel or restrain a public servant as in BNS. This shall serve a deterrent effect to those who attempt to commit suicide thereby giving more importance to right to life and reduce the rate of attempted suicide.
3. Reintroduce the bestiality crime clauses as it was in IPC which were omitted in BNS.
4. Include checks and balances in the parts pertaining to organized crime and terrorism, especially with regard to the discretionary authority granted to Superintendents of Police when bringing charges of terrorism under the BNS.
5. BNS shall include the words like "cyber", "virtual", "digital", "electronic", and "data" to apply to both digital and physical offenses.

Conclusion

It is always preferable that new laws or amendments to the existing laws be done with the changing society due to various developmental aspects. However the new enactments shall overcome the flaws of the earlier laws and suitable measures shall be taken for its effective implementation. With the introduction the new Criminal Laws i.e. the Bharatiya Nyaya Sanhita (BNS), Bharatiya Nagarik Suraksha Sanhita (BNSS), and Bharatiya Sakshya Adhiniyam (BSA), India's Criminal Justice System has undergone transformative changes. Repealing the colonial era laws with the new enactments will not serve the purpose. In light of the suggestions the gaps of the Bharatiya Nyaya Sanhita requires amendments for its effective implementation and also the provisions in contravention to the Constitution of India shall be rectified.

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