



Comparative analysis of Indian penal code and Bharatiya Nyaya Sanhita, 2023

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Abstract

On August 11, 2023, Union Home Minister Amit Shah tabled three legislations in the Lok Sabha intending to reform India's criminal justice system. The Bharatiya Nyaya Sanhita, Bharatiya Saksh Bill, and Bharatiya Nagarik Suraksha Sanhita will replace the former Indian Penal Code (1860), Indian Evidence Act (1872), and Code of Criminal Procedure (1973), in that order. A Parliamentary Standing Committee has been tasked with reviewing the three proposed statutes. The committee will conduct a thorough investigation and is expected to report its conclusions before the next legislative session convenes.

This article examines how the Bhartiya Nyaya Sanhita (BNS) replaced the Indian Penal Code (IPC) and how this has affected modern legal procedures. In the following, the terms IPC and BNS, respectively, will be used. The article would limit its scope to major modifications made to Indian penal law by thoroughly comparing sections from the IPC and BNS.

Keywords: Statues, IPC, BNS, Indian criminal justice, standing committee

Introduction

During the just-ended winter session of Parliament, the Bharatiya Nyaya Sanhita (BNS) 2023 was approved, superseding the Indian Penal Code of 1860 ("IPC"). On December 20 and 21, 2023, the Parliament passed the bill, and on December 25 of the same year, the President's assent was received. IPC is subdivided into 26 chapters that comprise 511 Sections. In contrast to the IPC's convoluted structure, the BNS has an improved structure having 19 chapters and 356 Sections. In addition, 19 IPC provisions have been repealed and 31 new crimes have been added to the BNS.

Essentials features of Bhartiya Nyaya Sanhita

The following are some of the modifications made to the Sanhita:

Definition Clause: There were interpretation provisions from Sections 6 to 52A under the IPC in place of a definition clause. These parts are combined under the new Act, and part II has separate definitions. Under the new Act, Sections 2(3) and (10) have been updated to include a new definition of "child" and transgender. In addition, some phrases have been altered, including the definition of "movable property" in Section 2(21), "document" in Section 2(8), which now covers electronic and digital records, and "court" in Section 2(5).

Punishment: The Indian Penal Code, Section 53, stipulated various penalties. These are now found in Section 4 of the BNS, and the penalty of community service has been added. The BNS does not define "community service," but to put it simply, it means that a court may order a prisoner to perform community service as part of their punishment; the prisoner will not be compensated for this service.

Abetment: As regards Abetment, Section 48 of the BNS states: Abetment outside India for offences in India: A person abets an offence within the meaning of this Sanhita who, without and beyond India, abets the commission of any act in India which would constitute an offence if committed in India.

Sedition: Above all, the BNS suggestion that "Sedition law will be completely repealed" is the most striking. The old Act defines Sedition under Section 124A. However, the Act, 'endangering sovereignty, unity and integrity of India', has been inserted as a new section. Section 150 will continue to contain provisions from the sedition statute, which is expected to be repealed, for actions that jeopardise India's sovereignty, unity, and integrity.

Section 124A of the IPC and Section 150 of the BNS differ primarily in that the former only addressed actions and behaviours "bringing into hatred or contempt" and "exciting disaffection" towards the government, while the latter refers to a wider range of actions and behaviours. In Section 150 of the BNS, which is equivalent to Section 124A of the IPC, the sentence for sedition has been increased from three years to seven years.

Section 150 of the BNS states that the act of sedition must be done willfully or knowingly, however, Section 124A of the IPC does not include this kind of behaviour. Section 150 of BNS acknowledges the use of modern communication techniques to commit sedition while Section 124A of IPC doesn't explicitly mention these aspects.

Rape: It was defined under Section 375 of the IPC, but it is now in Section 63 of the BNS. The controversial exception for rape in a marriage, called Exception 2, is still in place. However, the age requirements have been changed. The wife must now be at least 18 years old in order to be able to agree for this exception, up from 15 years old. Punishment for rape has been given under Section 64 of BNS. But, even after a lot of discussion, the rules against rape are still not gender-neutral. To this day, they still say that only women can be victims and only men can be offenders. The new Act talks about transgender people, but it doesn't say anything about them in the parts that talk about rape. People who have sex with a woman while lying or promising to marry her can be fined and sent to prison for up to ten years under the new law (Section 69). This only applies if the person is not planning to keep the promise of marriage. As of now, Section 70 of the BNS provides punishment for gang rape has been changed. Each of those persons shall be deemed to

have committed the offence of rape and shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life which shall mean imprisonment for the remainder of that person's natural life, and with fine

Hiring, Working with, or Involving a Child to Commit a Crime: Under the BNS there is a new crime added to Section 95. Anyone who hires or helps a child to commit a crime is punished by this law. Imprisonment for three years and a maximum period of ten years along with a fine are punishments for this offence. If the crime is carried out, the person will be punished as if they had committed the crime themselves. The meaning of this part includes hiring, engaging, or using a child for pornography or sexual exploitation.

Mob Lynching: In Mob Lynching if five or more people work together to kill any individual due to the reason of their race, caste, community, sex, place of birth, or any other similar reason, they will all be punished with death or life imprisonment, and they will also have to pay fine. This has been added to Section 103(2) under the new law to prevent the offences of mob lynching.

Death by Negligence: Another new Section 106(2) deals with cases where the criminal leaves the accident without telling a police officer or magistrate about it afterwards. This is a very serious crime that can get the person ten years in prison and a fine. According to Section 106 (1) A person causing death through rash or negligent acts, not amounting to culpable homicide, can be sentenced to up to five years in prison, along with a fine. If the act is committed by a registered medical practitioner during a medical procedure, the punishment may include imprisonment for up to two years, in addition to a fine. Section 106(2) deals with cases where the criminal leaves the accident without telling a police officer or magistrate about it afterwards. This is a punishable offence for ten years along with a fine. As hit-and-run accidents happen so often in the country, Section 106 (2) covers them and makes sure they are reported right away.

Attempt to Murder: Earlier attempt to murder under IPC Section 307, has now, been modified under Section 109 of the new Act, anyone who commits an act with the intention or knowledge that, if it resulted in death, would constitute murder, faces imprisonment of up to ten years, along with a fine; if harm is inflicted, the punishment could include life imprisonment or the aforementioned penalties.

Petty Organised Crimes: Section 112, deals with petty organized crimes. It says: Whoever, being a member of a group or gang, either singly or jointly, commits any act of theft, snatching, cheating, unauthorised selling of tickets, unauthorised betting or gambling, selling of public examination question papers or any other similar criminal act, is said to commit a petty organised crime.

Terrorism Under Section 113 of the new Act adds a new section. The Act has a definition for what constitutes a terrorist act and there are various punishments relating to terrorism like for commission, abetment, inciting or supporting this offence or setting up a camp to train terrorists or taking people to do terrorist acts, being a

member of an organization that does these things, hiding or harbouring a terrorist, or having money from terrorist activities.

Grievous Hurt: Section 117(3) of the new Act talks about causing disability to commit grievous harm on purpose. Other than this, S.117(4) of BNS makes it illegal for five or more people to act together and cause grievous harm to someone due to their race, caste, community, sex and place of birth and prescribes imprisonment of either description for a term which may extend to seven years along with fine.

Negative changes and loopholes

While the majority of the modifications in BNS may be seen as beneficial, some of the reforms have also given rise to serious issues while some are still untouched by the BNS.

No Definition of Community Service: As abovementioned, one of the positive changes in BNS is the introduction of Community service as a punishment. But what the Bill fails to do, though, is define just what community service entails. Without such a prescription, it is impossible to rule out the potential of sentencing disputes. In a few isolated instances, strange forms of community service were mandated. For instance, a directive to donate money to a gaushala, distribute copies of the Quran, or do temple service. Even though some of these directives were later revoked, it is still possible that there were more directives with similar religious overtones or that promoted patriarchal (or other harmful) standards. Thus, a list of possible community service activities or guidelines for conduct may be useful.

No Proper Step Toward Gender Neutrality in Rape and Sexual Assault: Gender neutrality in rape and sexual assault legislation refers to the concept that the criminal code should recognise that men, women, and transgender people can both commit and be victims of rape. In 2019, the Criminal Law Amendment Bill was introduced as a private member's bill which suggested major changes, in order to make the Indian criminal laws gender-neutral. But, BNS like IPC recognises only women as victims of rape and sexual assault while men as perpetrators in same.

No major change in Sedition Law: The proposed Section 150 maintains the criminalization of any act that "excites or attempts to excite" secessionist activities or "encourages feelings of separatist activities" without making incitement to violence or disruption of public order a prerequisite to bringing charges. Almost everything that Section 124A of the IPC now classifies as sedition is covered under Section 150, including speeches, newspaper articles, books, and plays.

Conclusion

Without a shadow of a doubt, it can be stated that the substantive criminal law, i.e., the IPC, has undergone various changes in terms of content as well as in the arrangement of the sections of the BNS. The majority of the modifications are generally well-intentioned and much-needed.

'Bringing laws is one thing and implementing it is another'. For proper implementation, better infrastructure should be incorporated into the criminal justice system.

Moreover, the BNS will be a way forward to overhaul the pre-colonial rules but still, It appears that the Bill is broadly based on the same principles as the existing Code (which is good as also natural). However, some of the new additions in the Bill require a closer examination both in terms of phraseology as well as intent. Therefore, it can be seen that the new Act has tried to get rid of all British colonial laws as they are still harsh in some places. There was a need for amendments to the Act which can make the new laws gender-neutral and new definitions as well as offences. The women-related offences have priority and are put into the starting chapters so that their crimes are taken into harsh punishments. But still, there are laws which had not focused towards men in the country. Hence, this new Act (BNS) has taken a new step to introduce the flaws previously unaddressed in the old Act.

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