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COMPARISON BETWEEN THE INDIAN PENAL CODE,1860 AND THE BHARTIYA NYAYA SANHITA,2023

Abstract

The Bharatiya Nyaya Sanhita, 2023 (BNS) is a new law that aims to replace the Indian Penal Code, 1860 (IPC) as the country's outdated corrective code. The BNS aims to simplify provisions related to offences and penalties, including prioritising offences against women and children and offences against the state. However, the BNS has made some positive changes, such as excluding rebellion as an offence, including transgender in the definition of sexual orientation, and introducing community benefit as a form of discipline.

Despite the BNS, there is a lack of coherence within the sentencing process, with no clear guidelines for sentencing after detention, restoration, or punishment. The assembly should emphasize that more than expanding discipline is needed to prevent wrongdoings.

In today's world, solitary confinement cannot continue as a form of punishment, as it violates human rights and rights guaranteed under Article 21 of the Indian Constitution, including rights to live with dignity, civil liberties, prisoners' rights, and increased emphasis on mental health. It also removed some offences used in past centuries but now those kinds of offences even do not exist. Some changes were made concerning the modernisation of the technologies to be remembered.

Introduction

In place of offering assistance or protection, the Indian Penal Code, which was modelled after British criminal law, governs and penalizes India. Because of how much society has changed, several provisions of this penal code are no longer applicable. To defend the rights of the Indian people, the Union Government of India proposed amending the criminal laws from the colonial era. To replace the Indian Evidence Act, the Indian Penal Code, and the Code of Criminal

Procedure (CrPC), the Minister of Home Affairs submitted three legislation in the Lok Sabha. A few days before India's 77th Independence Day celebration, the Parliament introduced three bills to replace the Indian Penal Code (IPC), 1860, the Code of Criminal Procedure, and other legislation.

Bharatiya Nyaya Sanhita, 2023

The IPC 1860, which addresses offences against the state, property, human body, public order, defamation, and public health, is the primary criminal code in India. Over the years, several revisions have been made to the long-standing Indian Penal Code to add new offences, change existing offences, and adjust the severity of the penalty. Furthermore, several Law Commission investigations have recommended amendments to the Indian Penal Code including offences against women, adulteration of food, and the death penalty.

The Bharatiya Nyaya Sanhita Bill 2023, which has 358 provisions as opposed to the 511 sections of the IPC 1860, was designed to alter the way criminal justice is administered in India. Amit Shah, the Minister of Home Affairs, introduced the Bharatiya Nyaya Sanhita Bill to the Lok Sabha on August 11, 2023. Furthermore, the BNS Bill was withdrawn on December 12, 2023, and the Bharatiya Nyaya (Second) Sanhita Bill, 2023 was tabled in the Lok Sabha. On December 20 and 21, the Lok Sabha and Rajya Sabha approved the Bharatiya Nyaya (Second) Sanhita Bill, 2023. Furthermore, the Bharatiya Nyaya (Second) Sanhita Bill, 2023 was signed by India's President Droupadi Murmu on December 25, 2023.

Key Provisions and Changes

Crimes against women, the state, murder, and minors are given priority under the new law. It also improved the uniformity and lucidity of the law by replacing terms like "minor" and "child under the age of eighteen" with the term "child" across the act. Community service was added to the list of punishments under Section 84 of Bharatiya Nagarik Suraksha Sanhita, 2023 for the following offences: "public servant unlawfully engaging in trade," "non-appearance in response to a proclamation," "attempting to commit suicide to compel or restrain the exercise of lawful power," "misconduct in public by a drunken person," and defamation. The following is a summary of some of the biggest changes:

- Section 2 of the BNS, 2023 provides definitions for "child" and "transgender". The term "document" has also come to refer to "Electronic and digital records," underscoring their importance in contemporary contexts. Another definition of "movable property" is now "property of every description, except land and things attached to the earth or permanently fastened to anything which is attached to the earth."
- In Section 48 of the BNS, 2023, a new rule called "Abetment outside India for offence in India" went into effect. This suggests that anyone sitting in another country to commit an offence in India might face legal action under this regulation.
- A brand-new offence as defined in Section 69 of the new legislation as "sexual intercourse by employing deceitful means, etc." It states that engaging in sexual conduct under pretences of marriage, employment, or promotion carries a fine and a maximum ten-year prison sentence.
- With the enactment of the new BNS law, the age-based distinction for punishment in cases of juvenile females being sexually assaulted by gangs was eliminated. According to Section 70(2), gang rape of a woman who is less than eighteen years old is punishable by death or a mandatory life sentence.
- The severe issue of mob violence, murder, or grievous harm by five or more persons in the designated place is likewise addressed by the new Act under Section 103. Any combination of caste, community, place of birth, sex, race, religion, or language might be the basis.
- The BNS, 2023's Section 106(i) increased the two-year sentence for causing death by negligence to five years in prison. It was also stressed that a licensed medical practitioner should face a fine and a maximum of two years in jail for engaging in such behaviour.
- In addition, a new clause is introduced to BNS 2023 to address hit-and-run cases under Section 106(ii). The law states, "Whoever escapes without reporting it to a police officer or a magistrate soon after the incident, and causes the death of any person by rash and negligent driving of a vehicle not amounting to culpable homicide, shall be punished with imprisonment of either description of a term which may extend to ten years, and shall also be liable to fine."
- Section 111 of the BNS, 2023 created deterrent penalties for organized crime, which includes land grabs, kidnappings, contract killings, cybercrime, extortion, and trafficking in persons, products, weapons, drugs, and financial schemes. It states that if an organised

crime is attempted or carried out and results in the death of any person, the offender risks life in jail or death and a fine of at least Rs. 10 lakhs. Others face a sentence of less than five years in jail, with the potential of a life sentence and a minimum fine of Rs. 5 lakhs.

- According to the Bharatiya Nyaya Sanhita of 2023, actions committed with "an intent to threaten or likely to threaten the unity, integrity, sovereignty, security, or economic security of India or with the intent to strike terror or likely to strike terror in the people or any section of the people in India or any foreign country" are also punishable by deterrent. Under Section 113 of the Act, a person found guilty of such an offence risks a minimum term of five years in prison, a maximum sentence of life, and a fine. If such an offence results in someone being murdered, the offender risks a fine, life in prison, or both.
- A noteworthy provision about the immigration of boys and girls from outside nations is included in Section 141. In particular, a 10-year jail term and a fine are imposed on any girl or boy under the age of twenty who is brought into India from a foreign nation and forced to have an unlawful sexual relationship with another person.
- Along with repealing the Sedition-related Section (Section 124A of the IPC), the BNS of 2023 upheld the basic right to freedom of speech and expression. Section 152 was added, stating that anybody found guilty of any act endangering the sovereignty, unity, or integrity of India might be sentenced to life in prison or, at most, seven years in prison, in addition to a fine.
- Section 304 of the BNS 2023, which establishes this new crime, states that "theft is snatching if, to commit theft, the offender suddenly, quickly, or forcibly seizes or secures or grabs or takes away from any person or from his possession any movable property." According to this section, snatching carries a fine and a maximum three-year prison sentence for the perpetrator.

Why BNS is being introduced?

The Indian Penal Code does not include the offences that were added by the Bharatiya Nyaya Sanhita, in 2023. "Consolidate and amend the provisions relating to offences and for matters therewith or incidental thereto" is the main driving force behind this. This law also mentions several additional significant modifications that result in an orderly framework to handle the difficulties and demonstrate a dedication to justice and clarity.

Although the repeal of legislation created about 160 years ago was the intended signal of a break from colonial continuities, analysts and attorneys have questioned the real degree of this separation. We take a quick look at the major modifications made by the BNS, which is meant to take the role of the IPC, the primary law defining crimes and specifying the penalties for committing them.

The BNS wants to do away with section 124A of the IPC, which lists acts that incite (or seek to incite) any hate, contempt, or disaffection toward the government as crimes punishable by up to a life sentence in prison. Clause 150 of the Bill, which penalizes "Acts endangering sovereignty, unity and integrity of India," has a worryingly similar provision.

In fact, by encompassing all acts that incite (or seek to incite) "secession, armed rebellion, subversive activities, or... feelings of separatist activities, or endangers sovereignty, unity, and integrity of India," clause 150 expands the application of the provision. The quantity that constitutes sovereignty, unity, integrity, or jeopardy thereof is not explained.

In addition to paragraph 150, clause 111 of the Bill creates a new offence known as a "terrorist act." The Indian Penal Code does not address acts of terrorism. The Unlawful Activities (Prevention) Act, 1967, or UAPA, which classified any act that aims to endanger "the unity, integrity and security of India" as a terrorist act, is largely referenced in the new definition.

Additionally, acts intended to "intimidate" any member of the public or "disturb public order" may be considered terrorist activity, which adds new aspects to Clause 111. According to the paragraph, it is also a terrorist crime to persuade a government official to carry out any action that might "destabilize social structures of the country." It should be emphasized that the Bill does not define "social structures."

Comparably, clause 109 of the BNS created the offence of "organized crime," even though no other state's laws outside of Gujarat and Maharashtra had any such crimes. It describes any illegal action carried out by or on behalf of three or more people who operate as a gang, mafia, or crime ring members.

In addition, aiding someone in the commission of a crime or in hiding after they have already committed one carries a sentence of five years to life in prison. Life in prison is the penalty even for possessing property obtained via the commission of organized crime, such as purchasing a home using proceeds from organized crime.

Targeting hate crimes or mob lynchings, a new felony has been created. Despite not being specifically included in any of the Bill's descriptions, it is now illegal according to section 101(2), "punishment for murder." In particular, "a group of five or more persons" may face life in prison or perhaps death if they jointly commit a murder based on factors like caste, race, or "any other ground" (religion is not mentioned in this context). "Just" murder has the same punishment as section 302 of the IPC. In contrast to Article 101(2), the sole penalties for "just" murder are life in prison or death.

There have also been notable modifications made to the legislation regarding sexual assault. Clause 69 of the Bill penalizes having sex with a woman if her permission was gained dishonestly (for example, by making a promise the woman does not intend to keep). The Bill does not refer to the new offence as rape. In the past, these crimes were prosecuted as "rape" under IPC section 375. Simultaneously, the IPC's section 377 which penalized "Sexual intercourse against the order of nature" has been repealed.

Before it was outlawed by the Supreme Court in *Navtej Johar v. Union of India* (2019), the clause was used to prosecute instances involving males having consensual sexual relations. The IPC still has a section that allows for the prosecution of males who rape other men. Consequently, the removal of section 377 has left a gap in the Bill.

On the other hand, gender-neutral rules have been implemented regarding kidnapping, trafficking, and the employment or procurement of juveniles for the commission of crimes, including pornography. As a result, although these provisions in the IPC solely protect young females, these rules will now cover children of both genders. In a similar vein, the terminology about the offences of assault and voyeurism has been modified to allow for the prosecution of individuals of either gender.

In addition to adding or removing offences, the Bill also makes general changes to sanctions. One of the significant modifications is that clause 65(2) of the Bill allows a man to be executed if he rapes a girl who is less than 12 years old.

Furthermore, the accused in a group rape of a girl under the age of eighteen may face life in prison or perhaps death. At the moment, the IPC only stipulates that gang rapes in which the victim was a minor can result in death. This proposal, however, does not fundamentally change the situation because the Protection of minors from Sexual Offences Act, 2012, likewise limits the use of the

death penalty to "aggravated" sexual assaults on all minors, which includes rapes of children younger than 12 years old.

One other point of notice is the replacement of outmoded terms like "unsoundness of mind" and "lunacy" with the word "mental illness."

Comparative Exercise

On August 11, 2023, Union Home Minister Amit Shah tabled three legislation in the Lok Sabha to revamp 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 legislation. The committee will conduct a thorough investigation and is expected to report its conclusions before the next legislative session convenes.

Alteration In The Structure

The IPC's 576 Sections are organised into 26 chapters, including additions and changes.

The BNS, with its 19 chapters and 356 Sections, has a better structure than the IPC's complicated one.

BNS suggests eliminating 22 IPC provisions in addition to making changes to 175 current provisions and adding 8 new sections.

Positive Changes

There have been several improvements since the BNS was recently implemented. This article's headers are split into four main categories, however, there may be instances where a single provision falls under more than one:

1. Progressive Changes:
 - Progressive Changes in BNS include:

- Under Section 69 of the BNS, having sex under pretences or making a fraudulent marriage commitment is illegal. It will carry a fine in addition to a maximum 10-year sentence of simple or harsh incarceration.
- For the first time, terrorism and the Terrorist Act are defined by law. Section 111 of the BNS also lists these acts as crimes.
- A New Section 302 Provision on "Snatching" states that anyone found guilty of snatching faces a maximum three-year jail sentence in addition to a fine.
- Section 101(2): A different mob lynching clause stipulated that the punishment for the crime might be seven years in jail, life in prison, or death.
- Another major alteration to the BNS is the replacement of derogatory terms like "lunatic person" and "person of unsound mind" with more modern ones. These all have labels that are more tactful, such as "person with mental illness" or "having an intellectual disability." This change is reflected in Section 22 of the BNS, which is equivalent to Section 84 of the IPC. Section 28(b) of the BNS, which is equivalent to Section 90(b) of the IPC, has undergone a similar change.
- It was formerly illegal to bring in girls under the age of 21 for sexual offences against another individual. According to the recently amended Section 139 of the BNS, which is equivalent to Section 366B of the IPC, it is now illegal to import boys under the age of 18 to have criminal relations with another person. Since this moves criminal law toward equality, it could have a good effect.
- Sections 109 and 110 of the BNS introduce organized crime and small organized crime or organized in general, respectively.

2. Stricter laws on Sexual Offences

- Stricter laws on Sexual Offences in BNS include:
 - According to Section 64 of the BNS, which is equivalent to Section 376 of the IPC, the sentence for rape has been increased from seven years to 10 years.
 - Formerly, "Whoever commits rape shall be punished with imprisonment of either description" was stated in Section 376 of the IPC. It is plainly stated

in Section 64 of the BNS that "whoever commits rape shall be punished with rigorous imprisonment."

- According to Section 70 of the BNS, which translates to Section 376DB of the IPC, gang rape of women under the age of eighteen carries a death sentence.
- Furthermore, Section 72 of the BNS contains a new provision that protects the names of victims of sexual assault.
- Section 69, a new provision, has been introduced to BNS in the Chapter that deals with offences against women and children.

3. Community Service as a punishment

- Five distinct types of penalties are listed in Section 53 of the IPC for which offenders are accountable:
 - Death
 - Imprisonment for life
 - Imprisonment, which is of two descriptions, namely:
 - Rigorous, that is, with hard labour
 - Simple
 - Forfeiture of Property
 - Fine
- In addition to the five penalties listed above, community service is also a penalty under Section 4 of BNS, which is equivalent to Section 53 of the IPC.
- Simply explained, community service is unpaid labour that criminals may be forced to undertake as a kind of punishment instead of going to jail.
- Community service is required by the BNS as a penalty for minor infractions. After this, the following section-by-section modifications are made:
 - If a public official disobeys their legal duty to refrain from doing commerce, they may face community service under Section 200 of BNS, which is equivalent to Section 168 of IPC, or simple imprisonment for up to a year, fine, or both.

- According to Section 354 of the BNS, which is equivalent to Section 499 of the IPC, defamation is a crime that carries a simple punishment of up to two years in prison, a fine, both, or community service.
- The penalty for attempting suicide is community service.
- Those found guilty of causing a public disturbance while intoxicated may be sentenced to community service if they are not given a 24-hour jail term.

4. The Sedition Law will be overturned and substituted.

Above all, the BNS suggestion that "Sedition law will be completely repealed" is the most striking. Section 150 of the proposed repeal of the Sedition Law would still apply to actions that jeopardize India's sovereignty, unity, and integrity. Section 150 of the BNS states, "Whoever, purposely or knowingly, by words, either spoken or written, or by signs, or by visible representation, or by electronic communication or by use of financial mean, or otherwise, excites or attempts to excite, secession or armed rebellion or subversive activities, or encourages feelings of separatist activities or endangers sovereignty or unity and integrity of India; or indulges in or commits any such act shall be punished with imprisonment for life or with imprisonment which may extend to seven years and shall also be liable to fine."

Section 150 of the BNS and Section 124A of the IPC differ primarily in the following ways:

- Whereas Section 124A of the IPC only addressed actions and behaviours "bringing into hatred or contempt" and "exciting disaffection" against the government, the language used in Section 150 of the BNS applies 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.
- While Section 124A of the IPC does not specifically address these issues, Section 150 of the BNS does accept the use of contemporary communication methods for sedition.

Negative Changes And Loopholes

While most of the BNS's changes are undoubtedly positive, some of the reforms have also led to significant problems, and others are still unaddressed by the BNS.

1. There Is No Definition for Community Service

As was already indicated, the addition of community service as a form of punishment is one of the improvements made to BNS. However, the Bill does not specify exactly what constitutes community service. Sentence disputes cannot be completely ruled out in the absence of such a prescription. There were a few rare cases where odd kinds of community work were required. For example, an order to do temple duty, provide money to a gaushala or distribute Quranic copies. Probably, other instructions with comparable religious undertones or that supported patriarchal (or other damaging) norms existed, even though some of them were eventually overturned. Therefore, a list of potential community service projects or standards of behaviour might be helpful.

2. No Appropriate Step Toward Gender Neutrality in Sexual Assault and Rape

The idea of gender neutrality in sexual assault and rape laws refers to the idea that the penal code should acknowledge that transgender individuals can conduct rapes as well as be victims of them. The Criminal Law Amendment Bill, which proposed significant revisions to make Indian criminal laws gender-neutral, was filed as a private member's bill in 2019. However, BNS, like the IPC, solely acknowledges women as rape and sexual assault victims and males as those who commit the crimes.

3. Sedition Law remains mostly unchanged.

The proposed Section 150 keeps in place the prohibition of any act that "encourages feelings of separatist activities" or "excites or attempts to excite" secessionist actions, but it does not need to incite violence or disrupt public order as a condition of filing charges. Almost all of the material that is now classified as sedition under Section 124A of the IPC is included under Section 150, including plays, speeches, newspaper articles, books, and articles.

Conclusion

A move toward a contemporary legal framework is represented by the proposed amendments to Indian criminal law with the adoption of the Bharatiya Nyaya Sanhita 2023. Along with amending the current IPC statute, it also adds several new measures that might enhance the justice system's effectiveness, equity, and openness. However, thorough implementation and ongoing monitoring will be just as important in protecting Indian individuals' rights as the mere execution of this law. The BNS of 2023 as a whole is a thorough legal framework that is sensitive to the changing requirements of society and dedicated to justice.

It is without a doubt true that both the substance and the organization of the BNS's sections have changed significantly from the original criminal code, the Indian Penal Code (IPC).

"Making laws is one thing; putting them into practice is quite another." Improved infrastructure has to be integrated into the criminal justice system for efficient deployment.

Furthermore, the Bill is essentially founded on the same ideas as the current Code (which is both excellent and natural). However, the BNS will be a means of modernizing the pre-colonial regulations. However several of the new provisions in the Bill need to be examined more closely, both in terms of their wording and their intended meaning.