

LEX SCRIPTA MAGAZINE OF LAW AND POLICY, VOL-1, ISSUE-3
ISSN-2583-8725

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ISSN- 2583-8725

VOLUME-1 ISSUE-3
YEAR: 2023

EDITED BY:
LEX SCRIPTA MAGAZINE OF LAW AND
POLICY

LEX SCRIPTA MAGAZINE OF LAW AND POLICY, VOLUME-1: ISSUE-3

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THE BHARATIYA NYAYA SANHITA (BNS) BILL, 2023

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Abstract

The improved new legislation introduced by the current administration has replaced the procedural and substantive laws that have existed in our nation for many years. The legislation of the country has undergone substantial modifications. It asserted that the Indian Penal Code of 1806 was created to safeguard British government interests rather than those of Indian citizens. The document upholds the long-standing legislation and the “Bharatiya Nyaya Sanhita Bill” introduced in the Lok Sabha on August 1. Does putting out a new legislation create dread and hence alter society? Does the proposed law bring about change if it is passed or upheld? It is reasonable to conclude that the colonial Indian penal code was strict when it came to crimes committed by citizens, but the government authorities did a poor job of upholding the well-written legislation. Since women and children are the victims of the most horrific crimes and the ones whose corpses are tortured, the Bill's primary objective is to prioritize them.

Keywords: Bharatiya Nyaya Sanhita, Indian Penal Code, Changes, Crime, Criminal Conspiracy, Murder, Rape, Enmity, Defamation, Offences

Introduction

The Bharatiya Nyaya Sanhita is a proposed Indian criminal code. On August 1, 2023, the Lok Sabha introduced it, and a Joint Parliamentary Committee is evaluating it. The BNS seeks to amend India's criminal law based on the 1860 IPC¹. After multiple changes, the colonial-era Indian Penal Code (IPC) is outdated and needs significant reform. The BNS is a complete and modern criminal code that fixes several IPC flaws. It also follows global human rights standards more closely. Important BNS components include:

¹ “Indian Penal Code 1860”

This is "an act or omission prohibited by law and punishable by a sentence of imprisonment or other deprivation of liberty." New offence definition. This meaning is broader than the IPC phrase, which only involves death or prison sentences.

A fresh category for offences: The BNS divides offences into primary, aggravated, and minor. Fines or brief jail terms are used to punish minor infractions. More time behind bars is the punishment for serious crimes, while life in prison or the death penalty is the punishment for aggravated crimes.

A novel method of sentencing With a focus on victim reparations and rehabilitation, the BNS takes a more restorative approach to sentencing. Additionally, it offers more adaptable sentencing alternatives, including community service and deferred sentences.

Additional protections for the accused: The BNS incorporates many additional protections, including the right to a fair trial, the presumption of innocence unless proven guilty, and the right to silence.

Instead of the previous 511 sections, the "Bharatiya Nyaya Sanhita Bill" would replace the IPC, which contains 356 sections after 175 sections were changed, eight new sections were inserted, and 22 sections were abolished. On Friday, August 11, Union Home Minister Amit Shah gave a presentation on the existing Bill. The home minister states, "Justice delivery will be central to new legal architecture.

The colonial-era laws were meant to protect that state and its subjects, while the proposed changes are meant for deterrence and ensuring justice to the victim." Murder will take precedence over crimes against the state, crimes against women, and crimes against children, according to the Bill's 356 modifications. The law also addresses the range of offences connected to organized terrorism for the first time. The Sanhita intends to introduce new offences, reinforce the penalty for specific crimes, and remove outdated and superfluous sections. Additionally, Sanhita attempts to make the legal language more understandable and straightforward. The main legal question that now has to be answered is whether the Bill's eight newly added parts accomplish the paper's goal. For example, are any new crimes being committed that do not already exist?

1. Changes made

Section 124A² of the codified law covers sedition. It states that anyone who, through spoken or written words, signs, visual representation, or any other means, incites or seeks to incite hatred or contempt toward, or provokes or seeks to provoke disaffection toward, the government established by law in [India], shall be punished with 16[life imprisonment], to which fine may be added, or three years of imprisonment, to which fine may be added.

Three years in jail and a fine were imposed for this offence. In contrast to the BNS bill, a new section handles "Acts endangering sovereignty, unity and integrity of India granted under section 150³ of the seventh chapter of the bill "of acts against the state," eliminating "sedition."

Individuals who intentionally or knowingly incite or attempt to incite secession, armed rebellion, subversive activities, encourage separatist activity, or endanger India's sovereignty or unity and integrity face life imprisonment or a maximum seven-year prison sentence, plus a fine. The BNS law allows for more convictions, whereas the Indian penal code is more cumbersome, managing these violations through several sections and fines. There is a slight penalty variation. Both fines include life sentences. Thus, nothing varies.

1.1 Criminal conspiracy –

Criminal conspiracy, according to Section 120⁴ of the Indian Penal Code, is an agreement between two or more individuals to commit a crime. This section also specifies the punishment for criminal conspiracy, which depends on the offence's kind and severity.

The law changed section 61⁵- definition and penalty.

Two or more persons agree to commit a crime or cause a non-criminal act to be committed. A criminal conspiracy requires one or more parties to support the agreement except for an agreement to conduct an offence. Justification. Whether the agreement's illegal action is the principal aim or a secondary effect is immaterial. Suppose this Sanhita does not specifically punish a criminal conspiracy. In that case, any person who is a party to one of the following will be punished as though they had assisted in the commission of the offence: (a) to commit

² "Indian Penal Code 1860, s124A"

³ "Indian Penal Code 1860, s150"

⁴ "Indian Penal Code 1860, s120"

⁵ "Indian Penal Code 1860, s61"

an offence punishable by death, imprisonment for life, or rigorous imprisonment for two years or more; (b) other than a criminal conspiracy is punished with imprisonment.

The offence carries a life term, a six-month imprisonment, a fine, or both under the Indian Penal Code. It is minor, but the BNS includes clause 120, which covers significant physical injury when provoked or intentionally inflicting damage. This paragraph specifies that anybody who willfully injures someone due to their extreme or unexpected provocation risks a maximum three-year prison sentence, a fine, or both.

1.2 Murder

IPC 302⁶ states, "Whoever commits murder shall be punished with death or imprisonment for life and shall also be liable to fine." Murderers are punished this way.

Section 302 of the Draft Sanhita in the projected BNS, 2023 criminalizes "snatching". Larceny requires an offender to abruptly, rapidly, or forcibly take, secure, or remove movable things from a person or his possession. This is "snatching," per Section 302(1).

Section 99 of Draft Sanhita distinguishes murder from culpable homicide.

Two Section 101 subsections address the murder penalty.

"Whoever commits murder shall be punished with death or imprisonment for life and shall also be liable to fine," says Section 101(1).

Possible Article 101(2) A group of five or more people who murder someone based on race, caste or community, sex, place of birth, language, personal belief, or any other ground is punishable by death, life imprisonment, a seven-year sentence, and a fine for each member. Sanhita says so.

Section 101(2) covers "murder by a group," including lynching.

A person who attempts to kill someone with the intent or knowledge to do so and in a fashion that would constitute murder faces up to 10 years in prison and a fine under Section 307. If the attempt injures the victim, the criminal risks life in prison or the punishment, as mentioned earlier.

⁶ "Indian Penal Code 1860, s302"

Section 307 of the Draft Sanhita defines robbery and its consequences. Section 107 of Draft Sanhita covers attempted murder and its penalties. The measure modified the longstanding heinous crime law. The Lok Sabha bill proposes many more modifications than these. This Bill requires that the conviction rate be presumed to be over 90%. Amit Shah says a forensic team must attend the crime site whenever legislation imposes a seven-year sentence or greater.

Indian Supreme Court's Bachan Singh v. State of Punjab⁷ ruling on death penalty legality was significant. The decision created the "rarest of rare" theory, restricting India's death punishment.

This 1980 ruling affirmed the death punishment under "Section 302 of the Indian Penal Code", 1860. However, the Court ruled that the death sentence should only be enforced when society's collective conscience is so horrified that it requires it. The Court wanted to reserve the death punishment for the most heinous situations.

According to Bachan Singh, judges must weigh mitigating and aggravating factors when evaluating whether a case is "rarest or rare." It stressed that the Court must use discretion based on the offence and criminal characteristics.

Punishment is for rehabilitation, not retaliation, the ruling said. It stressed the need for criminal justice reform and offender rehabilitation. The verdict stressed India's dedication to human rights and dignity and the restricted use of the death sentence, but it did not specifically advocate victim rehabilitation and compensation.

Note that the Bachan Singh ruling does not abolish the Indian death punishment. However, it severely limited its applicability and stressed the need for more significant examination in selecting whether to use it.

Overall, the Bachan Singh verdict created an important Indian death sentence precedent. It set strict standards for its implementation and redirected punishment from vengeance to rehabilitation and reform, underlining human rights and dignity in the criminal justice system.

The BNS's new rights for the accused—a fair trial, the right to be deemed innocent unless proven guilty, and the right to stay silent—could change the criminal judicial system. They may make convictions harder for the prosecution and acquit more innocent people.

⁷ "Bachan Singh V State of Punjab (1980)"

Also, the case of The 2011 Supreme Court of India ruling on euthanasia or "mercy killing." was in Aruna Shanbaug v. Union of India⁸.

After a coworker viciously abused her, nurse Aruna Shanbaug became vegetative for almost 37 years. The petition requested that her life support be discontinued since she was in persistent agony and could not recover.

The Court upheld the right to die with dignity but barred judges from legalizing active euthanasia or mercy killing. It clarified that passive euthanasia—withdrawing or withholding life support to facilitate a natural death—may be allowed in some instances.

The petitioners worried about "Section 300⁹ of the Indian Penal Code" (IPC)'s comprehensive definition of "mercy killing", which criminalized every deliberate killing, regardless of the circumstances. The Court accepted this issue and found that the IPC's definition of "mercy killing" was too broad and may be used to imprison anybody seeking to assist terminally ill persons who die with dignity.

The Court advised lawmakers to define and regulate passive euthanasia properly. The Court established standards and protections for passive euthanasia cases until such legislation is passed. People call it the "Aruna Shanbaug guidelines."

Legislation is needed to amend the law or create an "assisted dying" offence. Active euthanasia or mercy killing is still illegal in India. However, the Aruna Shanbaug verdict allows passive euthanasia.

The BNS's new criminal categorization might change punishment. Mild infractions result in fines or brief jail terms, whereas significant offences result in lengthier punishments: death sentence or life imprisonment for aggravated offences.

1.3. Rape

The proposed Sanhita, replacing the 1860 Indian Penal Code, redefines and punishes rape. Still, it kept several problematic parts of the old law. Rape is sexual acts against a woman against her consent or permission, according to Section 63 of the Draft Sanhita. Rape is punishable by a minimum 10-year prison sentence, a life sentence, and a fine under draft Sanhita. The punishment must be fair to cover the victim's medical bills and rehabilitation. This should have seen a change which would have made the crime more punishable than before and made it so that one who does it shall be punishable also. The rape rate in a country like India should have

⁸ "Aruna Shanbaug V Union of India (2011)"

⁹ "Indian Penal Code 1860, s300"

been taken into consideration, which should have made the crime a strict death penalty instead of a life sentence.

1.4. Cheating

Section 316 of the new Sanhita defines cheating more precisely and fairly than Section 420. Section 316 classifies cheating into multiple levels based on victim harm kind and degree. Cheating carries a seven-year sentence under Sections 316 and 420. However, the minimum punishment is now six months instead of one year. One of the most significant changes was deleting Section 420¹⁰, which dealt with lying and forced property surrender. India often misuses this provision for foolish or minor objectives. Instead of reducing rape and murder, the new legislation has escalated violence against women and children, covered by sections 63 to 97. Separate sexual offences are significant.

1.5 Promoting enmity

The “Indian Penal Code (IPC) of 1860” will be modernized and simplified by the planned Sanhita of 2023. The elimination of section 505¹¹, which addresses remarks that may incite discord among various groups or cause public disturbance, is one of the modifications.

The same offence is covered under section 194, introduced in the Draft Sanhita, but is more precisely worded. According to Section 194, activities detrimental to preserving harmony are also included in the reasons for hostility, along with religion, race, place of birth, domicile, language, and other factors.

In addition, it stipulates harsher penalties for repeat offenders for offences committed at religious rituals or places of worship.

1.6 Promoting Enmity Between Groups

A new criminal code for India called Sanhita, 2023, is being drafted to modernize and streamline the current rules. One of the changes it brings about is the replacement of Section 153A¹² in the IPC, which addresses the offence of inciting hatred between groups based on religion, race, place of birth, residence, language, etc., and engaging in actions detrimental to the preservation of peace, with Section 194 in the proposed Sanhita. Crimes committed at a

¹⁰ “Indian Penal Code 1860, s420”

¹¹ “Indian Penal Code 1860, s505”

¹² “Indian Penal Code 1860, s153A”

house of worship or any other location revered by a religious community are also included in this category.

Receiving property stolen by war or depredation, as described in “sections 153 and 154”, is defined as a crime in the Draft Sanhita. This provision is equivalent to “Section 412¹³ of the Indian Penal Code”, which addresses the dishonest receipt of property stolen during a criminal act. The proposed Sanhita aims to improve the clarity, concision, and consistency of criminal law with human rights norms and constitutional ideals.

1.7 Defamation

"Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both," states IPC Section 500¹⁴, which lays out the penalties for defamation.

In the proposed new Bill, The new Sanhita that is being proposed lacks Section 499. The new Sanhita's Section 354 (1) addresses the crime of slander. The proposed Sanhita's Section 354(2) outlines "community service" as one of the penalties for slander. It states: "Anyone who defames another will be punished with community service, a fine, or simple imprisonment for a term that may extend to two years."

Conclusion

In Conclusion, Both the law that is being enforced and the Bill that will be implemented have specific goals that will improve society overall. The home minister's remarks could not represent the established legislation. Sentencing the guilty according to the specified substantive and procedural legislation has been practised since the Indian Penal Code of 1908. From a consensus perspective, it is not for the legislation to be altered, strengthened, or expedited. Undoubtedly, a country can be managed using the traditional framework of well-written legislation. The inquiry pertains to the extent to which the courts have ever suitably executed the legislative before its drafting. Where in the country is the law supreme? The aim behind a measure to prioritize crimes against women and children is reasonably comprehensive in a country like India, partly due to a misinterpretation of the traditions and customs of our country. While it is admirable that the present administration has made significant changes with this new law, it is still obligated to fulfil its commitment to the residents in need.

¹³ “Indian Penal Code 1860, s412”

¹⁴ “Indian Penal Code 1860, s500”

The Bharatiya Nyaya Sanhita (BNS) is a comprehensive and contemporary criminal code that fixes several IPC flaws. It follows international human rights norms better. The BNS changes the definition of crime, classification of offences, sentence, and accused protections. The BNS's expanded definition of crime may increase arrests, charges, and convictions. Fines or brief jail terms now punish minor infractions under the BNS. Thus, a drop in long-term jail sentences may compensate for the rise in criminal convictions.

The BNS's new criminal categorization might change punishment. Mild infractions result in fines or brief jail terms, whereas significant offences result in lengthier punishments. Death sentence or life imprisonment for aggravated offences. This new categorization method may result in more short jail sentences and fewer lengthy prison sentences or death sentences. The BNS also prioritizes victim rehabilitation and compensation, which may lead to more criminals being released early and compelled to pay reparations.

The BNS's new sentencing policy may get mixed reviews. Some may say it is too mild on offenders, while others will say it is more humanitarian and sympathetic than the existing system. A significant law, the BNS, might change India's criminal justice system. It is broader and more contemporary than the IPC and more human rights-compliant. There are also new accused protections in the BNS. Remember that the BNS is not legislation yet. The Joint Parliamentary Committee is considering it. It is unclear if the BNS will be passed as-is or altered.