

DIVISIONAL JUDICIAL SEMINAR

BASTAR DIVISION

(DISTRICT DANTEWADA, JAGDALPUR, KANKER AND KONDAGAON)

13th APRIL, 2024

**TOPIC: OVERVIEW STRUCTURE AND KEY PROVISIONS OF BHARATIYA
NYAYA SANHITA, 2023**

**(DISTRICT COURT UTTAR BASTAR
KANKER)**



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INTRODUCTION

- In India, Indian Penal Code, 1860 is the principal law on criminal offences covering those affecting the property, the human body, public order, defamation, public health, and offences against the state. The Indian Penal Code was the replica of British criminal jurisprudence, designed not to help or protect India but rather to control and punish them. Various Sections along with fine amount of this criminal law were irrelevant in the current scenario because we as a society have evolved in every aspect.
- **The Bharatiya Nyaya Sanhita, 2023 (“BNS”)** was enacted on December 25, 2023, repealing and replacing the substantive criminal law, i.e. **Indian Penal Code, 1860 (“IPC”)** as the new penal law of the country. In exercise of the powers conferred by sub-section (2) of Section 1 of the **Bhartiya Nyaya Sanhita, 2023 (45 of 2023)**, the Central Government hereby appoints the **1st day of July, 2024** as the date on which the provisions of the said Sanhita, except the provision of sub-section (2) of Section 106, shall come into force.
- The IPC has now after nearly 150 years been re-enacted with the stated objective of repealing colonial laws and “streamlining provisions relating to offences and penalties”. Summarily, the significant changes sought to be brought in by way of the BNS include the consolidation of certain provisions of the IPC to make it more concise.
- IPC was subdivided into 23 chapters that comprised of 511 Sections. In contrast to the IPC's convoluted structure, the BNS has an improved structure having 20 chapters and 358 Sections.
- Amongst others, the BNS aims to give precedence to offences against women and children and offences against State. It introduces community service as a punishment for petty offences. In order to deal effectively with the problem of organised crimes and terrorist activities, new offences of terrorist acts and organised crime while re-characterising sedition as acts endangering the sovereignty, unity and integrity of India has been added in BNS with deterrent punishments. The BNS also brings about changes to fines and punishments for various offences which have been suitably enhanced.
- The BNS conforms to some decisions of the Supreme Court. These include omitting adultery as an offence and adding life imprisonment as one of the penalties (in addition to the death penalty) for murder or attempt to murder by a life convict.

HISTORY OF IPC AND BNS

- The initial draft of the Indian Penal Code (IPC) was composed by the inaugural Law Commission, presided over by Thomas Babington Macaulay, in the year 1834. Its enactment was formalized in January 1860, signifying the establishment of a comprehensive legal framework to address various criminal offences.
- In 2020, the Ministry of Home Affairs established a committee led by Prof. (Dr.) Ranbir Singh, former Vice Chancellor of National Law University (NLU), Delhi. This committee was tasked with reviewing the three codes of criminal law.
- The primary objective of the committee was to propose comprehensive reforms to the country's criminal laws in a manner that is both principled and effective.
- The committee's focus was on ensuring the safety and security of individuals, communities, and the nation as a whole.
- Throughout its deliberations, the committee aimed to uphold constitutional values such as justice, dignity, and the intrinsic value of each individual. Their goal was to recommend amendments to the criminal laws that align with these values and priorities.

WHAT WAS THE NEED?

INDIAN PENAL CODE TO BHARATIYA NYAYA SANHITA

Addressing Colonial Legacy:

- Shedding 160-year-old law made by the britishers to govern and rule Indians.
- Aligning criminal law with Indian values and ethos as it only provided for punishments and no reformative measures.

Modernizing Outdated Provisions:

- Updating archaic language and concepts so that every citizen can easily understand the substantive criminal law. **Aiming for simpler language and structure** for better understanding and implementation.
- Reflecting contemporary social realities and technological advancements as more and more offences are committed by means of internet and electronic gadgets.

Tackling Emerging Crimes:

- Combating terrorism, organized crime, and cybercrime more effectively. Addressing new forms of social and economic offenses.
- Emphasis on victim protection, compensation, and rehabilitation
- The BNS aims to simplify process as IPC was criticised for complexity and inconsistency with 511 sections and 26 chapters, resulting in overlapping and poorly defined offenses, causing confusion in its application.
- Removing discriminatory provisions and promoting Gender Justice and Equality by specifically dedicating a chapter offences against women and children.
- Ensuring gender-neutral laws and addressing specific crimes against women and marginalized groups.
- Harmonizing with International Standards.

CHAPTERIZATION OF BNS, 2023

Ch. No.	Title of Chapter	Sections
1	Preliminary	1 - 3
2	Punishments	4 - 13
3	General Exceptions	14 - 44
4	Abetment, Criminal Conspiracy and Attempt	45 - 62
5	Offences against Women and Children	63 - 99
6	Offences affecting the Human Body	100 - 146
7	Offences against the State	147 - 158

8	Offences affecting the Army, Navy and Air Force	159 - 168
9	Offences relating to Elections	169 - 177
10	Offences relating to coin, currency notes, bank notes, government stamps	178 - 188
11	Offences against Public Tranquility	189 - 197
12	Offences by or relating to Public Servants	198 - 205
13	Contempt of lawful authority of Public Servants	206 - 226
14	False Evidence and offences against public justice	227 - 269
15	Offences affecting Public Health, Safety, Morals	270 - 297
16	Offences relating to Religion	298 – 302
17	Offences against Property	303 - 334
18	Offences relating to documents and property marks	335 - 350
19	Criminal Intimidation, Insult, Annoyance, Defamation	351 - 357
20	Repeal and Savings	358

OVERVIEW OF DEFINITIONS UNDER BNS, 2023

- In IPC, there was no definition clause. All the interpretation clauses were spread over sections 8 to 52A of IPC.
- The definition of ‘section’ in section 50 of IPC stands omitted by BNS as it is now a word of extensive usage in various legislations and it needs no definition or elucidation.
- Most of these interpretation clauses in sections 8 to 52A of IPC, 1860 have been retained in BNS without any change and have been compactly grouped in section 2 of BNS in alphabetical dictionary sequence for ease of reading and reference.
 - **Child:** New definition of ‘child’ is provided under Section 2(3) of BNS which means any person below the age of 18 years.
 - **Documents:** Section 2(8) of BNS provides that documents includes ‘electronics and digital record’.
 - **Transgender:** The definition of “gender” in section 8 of IPC recognizes only male and female genders. The new definition of “gender” in section 2(10) of BNS recognizes “transgender” in addition to genders of “male” and “female”.
 - **Movable Property:** Scope of “Movable property” in section 2(21) not limited to property in corporeal form, unlike the definition in section 22 of IPC, 1860. Therefore, movable property includes property of every description other than immovable property whether such property is in corporeal (tangible physical) form or not.

KEY CHANGES MADE IN BNS, 2023

PUNISHMENTS UNDER BNS, 2023

- Section 53 of IPC provided for 5 types of punishments viz. (1) Death; (2) Imprisonment for life; (3) Imprisonment which is of two descriptions–rigorous and simple; (4) Forfeiture of property and (5) Fine. Section 4(f) of BNS has introduced a new 6th type of punishment, i.e.. **Community service.**
- To reduce the burden on jails, community service has been included in BNS as a punishment for the first time and it is being given legal status.
- The term “community service” is not defined in BNS. However, it is defined by Explanation to section 23 of BNS to mean the work which the Court may order a convict to perform as a form of punishment that benefits the community, for which he shall not be entitled to any remuneration.
- **The Juvenile Justice (Care and Protection of Children) Model Rules, 2016** under Section 2 (vi) defines “**community service**” which means service rendered by children in conflict with law who are above the age of fourteen years and includes activities like maintaining a park, serving the elderly, helping at a local hospital or nursing home, serving disabled children, serving as traffic volunteers etc,

<ul style="list-style-type: none"> • BNS prescribes Community Service as punishment for petty offences like:-
1. non-appearance in response to a proclamation under Section 84, BNSS
2. Involvement of public servant in illegal trade Section 202 of BNS,
3. attempt to commit suicide, to compel or restraint exercise of lawful power of public servant U/S.226 BNS ,
4. petty theft on return of theft money under Section 303 of BNS,
5. misconduct in public by a drunken person U/S.355 of BNS ,
6. defamation U/S.356 BNS, etc.

PUNISHMENT FOR DEFAULT IN PAYMENT OF FINE OR DEFAULT OF COMMUNITY SERVICE

- IPC only provided for imprisonment in default of fine only. As there was no punishment of community service in IPC, there was also no imprisonment in default of community service in IPC.
- Consequent upon introduction of new punishment of community service by the BNS, sub-sections (4) and (5) of section 8 of BNS provide for imposing imprisonment in default of community service.
- Under **Section 67 of IPC, 1860** default in payment of fine following punishment followed:
 1. Fine not exceeding Rs. 50 – Imprisonment not exceeding 2 months
 2. Fine not exceeding Rs. 100 – Imprisonment not exceeding 4 months
 3. In any other case – Imprisonment not exceeding 6 months
- Under **Section 8 of BNS**, default in payment of fine or default of community service following punishment follows:
 1. Fine not exceeding Rs. 5000 or community service – Imprisonment not exceeding 2 months
 2. Fine not exceeding Rs. 10,000 or community service – Imprisonment not exceeding 4 months
 3. In any other case – Imprisonment not exceeding 1 year.

ABETMENT, CRIMINAL CONSPIRACY AND ATTEMPT (CHAPTER IV)

Covered in Chapter IV of the BNS (corresponding to Chapter V of the IPC), the most notable change is the addition of **Section 48** which deals with abetment outside India for an offence in India which would hold a person residing in another country guilty of abetment if he/she instigates another person situated in India to commit an offence.

OFFENCES AGAINST WOMEN AND CHILDREN (CHAPTER V)

Chapter V of the BNS seeks to substitute offences affecting the human body, under Chapter XVI of the IPC. While 'marital rape' has not been defined and/or categorized as an offence in the BNS, two new sections have been added namely:

a. Section 69 of BNS, 2023 provides for Sexual intercourse by employing deceitful means, or by making a promise to marry a woman without any intention of fulfilling the same with a punishment of imprisonment for up to ten years, and fine. In essence, this section has been introduced with an intent to curb the various instances of 'false promise to marry'.

b. Section 70(2) of BNS, 2023 increases the threshold for the victim to be classified as a major, in the case of gangrape, from 16 to 18 years of age carrying a punishment of imprisonment for life, i.e., imprisonment for the remainder of that person's natural life, and with fine, or death.

OFFENCES AFFECTING HUMAN BODY (CHAPTER VI)

Some of the most significant changes to the IPC have been made to the chapter pertaining to offences affecting the human body (Chapter XVI of the IPC) which are now specified under Chapter VI of the BNS. While largely retaining the description of existing offences, the BNS has sought to increase the quantum of punishment for some of them. A few notable changes include:

I. Murder:

- The punishment for murder is now specified under **Section 103** of the BNS.
- **Mob Lynching:** In view of the increasing cases of mob-lynching and hate crimes in the country, the BNS now specifically provides for punishment of murder in cases of mob-lynching under Section 103(2). The provision states that where a group of five or more acting in concert commits murder on grounds of race, caste or community, sex, place of birth, language, personal belief or any other similar ground then each member of such group shall be punished with death or with imprisonment for life, and shall also be liable to fine.

In July 2017, the Hon'ble Supreme Court in the case of *Tahseen s. Poonawala v. UOI* had laid down several preventive, remedial and punitive measures to deal with lynching and mob violence and aptly referred to mob lynching as a 'horrendous act of mobocracy.'

II. Causing death by negligence (Section 106): The offence of causing death by negligence has undergone a significant change under the BNS. The punishment for causing death by rash and negligent act has been increased to imprisonment which may extend to five years and with fine. Earlier such an offence was punishable with two years or with fine or both under IPC.

➤ Section 106 provides for death by rash and negligent act of a medical practitioner while performing a medical procedure. The offence is punishable with imprisonment which may extend to two years and with fine. This offence should be read in light of the judgment of the Supreme Court in *Jacob Mathew v. State of Punjab, (2005) 6 SCC 1*, which laid down guidelines to ensure that the offence is not misused against doctors.

➤ **Hit and Run**

A provision seemingly to punish hit-and-run cases has also been introduced in the BNS. The BNS now provides that whoever causes death by rash or negligent driving of vehicle, and thereafter escapes from the scene of incident without reporting to the police or a magistrate, will be punished with a maximum of ten years' imprisonment and shall also be liable to fine. Section **106(2)** has been introduced to cover the hit and run accidents and to ensure reporting of accident immediately. Punishment under section 106(2) is not attracted merely by virtue of driver escaping from the scene after the incident to escape the wrath of bystanders who might mob-lynch him. Offence is committed only if escape from scene is coupled with non-reporting by him to Police or Magistrate soon after the incident. However, this provision does not come into force due to nationwide protests relating to harsh punishment in this provision.

III. Organised Crime: Section 111 of the BNS introduces another new offence of 'Organised Crime' to be any continuing unlawful activity including kidnapping, robbery, vehicle theft, extortion, land grabbing, contract killing, economic offence, cyber-crimes, trafficking of persons, drugs, weapons or illicit goods or services, human trafficking for prostitution or ransom, by any person or a group of persons acting in concert, singly or jointly, either as a member of an organised crime syndicate or on behalf of such syndicate, by use of violence, threat of violence, intimidation, coercion, or by any other unlawful means to obtain direct or indirect material benefit including a financial benefit. Punishment is varied depending on the level involvement of the person involved in the offences with death or imprisonment for life being prescribed where the

offence has caused death, at its highest. Section 112 of the BNS covers petty organised crime or organised crime in general.

- The abovesaid definition of Organised Crime also seeks to introduce within it, the concept of "economic offences".

OFFENCES RELATING TO TERRORISM

- A “terrorist act” is a new offence defined under Section 113 of BNS, 2023. It is relevant to note that the offence relating to terrorism has been included under the chapter dealing with offence affecting human body. Traditionally, it has been found in chapter dealing with offence against state.

- **Overlap with Unlawful Activities Prevention Act, 1967**

The offence of committing a terrorist act overlaps with the UAPA which already defines and provides for the offence of terrorist act. The definition of a terrorist act under BNS exactly mirrors the definition of terrorist act under the UAPA. Therefore, it is unclear why the new offence of terrorist act has been provided for in the BNS. This is especially since UAPA is a special statute enacted for providing a more effective mechanism for prevention of *inter alia* terrorist activities.

- **Decision on Case Registration**

The BNS recognises that the provisions of BNS and UAPA are overlapping and accordingly, provides that an officer not below the rank of Superintendent of Police shall decide whether to register a case under the BNS or the UAPA. If an act falls within the definition of a terrorist act under both the BNS and UAPA, the special statute – i.e., the UAPA – will prevail.

OFFENCE OF SEDITION

- The most welcome change in the BNS is the deletion of offence of sedition provided under Section 124A of the IPC. The offence of sedition was nothing but a vestige of colonial past introduced to punish any form of rebellion against the British Government. It had no place in a democratic society governed by rule of law.

- Though offence of sedition under Section 124A of IPC has been deleted, it seems to have been replaced by Section 152 of BNS.
- **Section 152 of BNS, 2023** instead penalises the following: (i) exciting or attempting to excite secession, armed rebellion, or subversive activities, (ii) encouraging feelings of separatist activities, or (iii) endangering the sovereignty or unity and integrity of India. These offences may involve exchange of words or signs, electronic communication, or use of financial means.

OFFENCES AGAINST PROPERTY (CHAPTER XVII)

- **Snatching:** Section 304 of the BNS introduces the offence of snatching which states that "Theft is "snatching" if, to commit theft, the offender suddenly or quickly or forcibly seizes or secures or grabs or takes away from any person or his possession any moveable property."

DELETION OF OFFENCES FROM BNS, 2023

- **Unnatural Offence**

The BNS in line with the judgment of the Supreme Court in *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1 has deleted the offence under Section 377 of IPC. This is a welcome decision in line with human dignity.

- **Attempt to Commit Suicide**

The offence of attempt to commit suicide, as found under Section 309 of the IPC, has also been omitted in the BNS. This is a progressive omission that views attempt of commit suicide as a mental healthcare crisis, as opposed to a crime.

- **Sedition**

Section 124 A relating sedition has been deleted.

- **Adultery**

In the same way Section 497 of IPC relating to adultery has been deleted.

CRITICAL ANALYSIS OF BNS, 2023

- 1) Minimum age of criminal responsibility higher than several other jurisdictions
- 2) Age threshold of the victim for similar offences against children varies
- 3) Duplication of offences with other special laws
- 4) Aspects of sedition retained
- 5) The scope of community service is unclear

CONCLUSION

- In conclusion, while the BNS, 2023 presents a commendable effort to modernize India's penal system and expedite the justice process, careful attention is needed to refine certain aspects.
- The consolidation and simplification of provisions demonstrate an intention to enhance clarity and efficiency. The heightened penalties for serious offences are positioned as potential deterrents.
- However, vigilance is necessary, particularly regarding new provisions relating to offences against the state and public tranquility, to avoid any unintended ambiguity or misrepresentation.
- Overall, BNS, 2023 represents a progressive step towards reforming the criminal justice framework ensuring a balance between contemporary needs and the preservation of fundamental principles.

“THANK YOU”