

Bharatiya Nyaya Sanhita 2023: An Overview

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Abstract- Our Country Legal Framework is witnessing a transformative shift with the introduction of the Bharatiya Nyaya Sanhita 2023, bringing about significant changes to modernise the Criminal Justice system. The Bharatiya Nyaya Sanhita (BNS)¹ It is the official criminal code in the Republic of India. It was introduced on August 11, 2023, to replace the 158-year-old IPC², which dated back to the period of British India. In this article, we will discuss the key provisions and changes proposed by the introduction of the Bharatiya Nyaya Sanhita (BNS) of 2023.

INTRODUCTION

The Bharatiya Nyaya Sanhita (BNS) 2023 is the Republic of India's new comprehensive criminal code, marking a significant shift in the legal framework governing offences in India. The Bharatiya Nyaya Sanhita Bill, 2023, was introduced in the Lok Sabha by Amit Shah, the Minister of Home Affairs, on August 11, 2023. During the introduction of the bill, Union Minister Amit Shah stated, "Anyone who works against the country must not be spared and should receive the strictest punishment." He emphasised that these criminal law bills will ensure victim-centric justice. The Bharatiya Nyaya (Second) Sanhita Bill, 2023, received the assent of the President of India on December 25, 2023.³ It came into effect on 1st July 2024. The Act aims to combat vital issues such as cybercrimes, offences against women, and technological advancements, while being associated with international best practices and human rights standards. The Bharatiya Nyaya Sanhita consists of 20 chapters and 358 sections. Its anatomy is similar to that of the IPC. This Act is to consolidate and amend the provisions relating to offences and seeks to replace the entire Indian Penal Code and to provide a new approach for penalties and punishments for crimes defined under a new pattern.

Chapter 1 to 20 of The Bharatiya Nyaya Sanhita 2023 contains the provisions about Preliminary Sections, Punishments, General Exceptions and Right of Private Defence, Abetment, Criminal Conspiracy and Attempt of Abetment, Offences against Women and Children, Offences Affecting the Human Body, Offences Against the State, offenses relating to the Army, Navy and Air Force, Offences relating to Elections, offenses relating to Coin, Currency Notes, Bank Notes and Government Stamps, Offences against the Public Tranquillity, offenses by or relating to Public Servants, offenses by or relating to Public Servants, False Evidence and Offences against Public Justice, Offences affecting the Public Health, Safety, Convenience, Decency and Morals, Offences associating to Religion, Offences against Property, Offences relating to Documents and to Property marks and Criminal Intimidation, Insult, Annoyance, Defamation etc.

KEY PROVISIONS

In the Indian Penal Code 1860, 19 provisions have been dropped, and 20 new offences have been inserted in the BNS. The punishment of imprisonment has been expanded for 33 offences, and fines have been increased for 83 offences. A mandatory minimum punishment has been intercalated for 23 offences. Community service has been introduced for six offences as a punishment for the first time for petty offences.⁴ A new offence of organised crime and Petty organised crime or organised crime in general has been introduced in BNS. The BNS explains a "Terrorist act" as a new offence. The chapter on crimes affecting the human body now encompasses the offence related to Terrorism. A new provision of hit and run cases is introduced, and also a change in the punishment in Hit and run cases. The BNS has associated a specific provision for Mob lynching and stipulated punishment for mob lynching. The offence of

¹ Hereafter referred as the Bharatiya Nyaya Sanhita

² Indian Penal Code 1860

³ Bills to replace criminal codes enacted into law as President Murmu gives nod. *Deccan Herald*. Retrieved 25December 2023

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https://en.wikipedia.org/wiki/Bharatiya_Nyaya_Sanhita

Sedition has been proposed under the proposed law with a new nomenclature, and a more expansive definition has been inserted, “Acts endangering the Sovereignty, unity and integrity of India”. The BNS 2023 has introduced a new offence of ‘Snatching’. The Main Provisions are as follows: -

1. The Chapters/sections for offences against women & children and offences affecting the human body (murder) have been given precedence. Further, the offences against women and children that were scattered throughout the erstwhile IPC have been brought together and consolidated under Chapter V. In the same manner, the offences affecting the Human body are also brought up in the order and placed there after in Chapter VI.
2. All 3 incomplete categories of offences, i.e. Attempt, Abetment & Conspiracy, are brought together in one Chapter⁵. Which were earlier in different chapters.
3. List of new sections and added provisions.⁶ For example, Abetment of an offence committed in India by a person outside the country has now been classified as an offence under the BNS.⁷ The New offence of Snatching has been officially introduced.⁸ And also new categories of offences like Mob Lynching, Organised Crime and Petty Organised Crime have been established as separate offences within the BNS. A new provision has been added in the BNS to punish those who attempt to commit suicide with the intent to compel or restrain the exercise of any lawful power by a public servant.⁹
4. To address organised crime and terrorist acts, specific offences related to these activities have been included in the Sanhita, accompanied by strict punishments aimed at deterring such behaviour. These provisions penalise not only the commission of these acts but also attempts, abetment, and conspiracy related to organised crime and terrorist activities.¹⁰ Both sections impose penalties on individuals who are members of organised crime syndicates or

terrorist organisations, as well as those who harbour or conceal individuals involved in such crimes. Additionally, the possession of any property derived from the commission of organised crime or terrorist acts is also punishable. Section 111 pertains to organised crime and reflects various state laws enacted in this area, while Section 113, concerning terrorist acts, has been modelled after the Unlawful Activities (Prevention) Act (UAPA).¹¹ Furthermore, in cases involving terrorist acts, a senior officer, not below the rank of Superintendent of Police (SP), will determine whether to register a case under the provisions of the BNS, 2023, or the UAPA.

5. A new offence has been introduced in the BNS that criminalises engaging in sexual intercourse based on false promises, such as promises of marriage, employment, or promotion, or by concealing one's identity.¹² This provision aims to deter individuals who use deceitful tactics, like making false promises or hiding their true identity, to obtain consent from women for sexual intercourse. The primary goal is to protect women's rights
6. 20 Provisions of IPC have been deleted.¹³ Offences like Attempt to Commit Suicide u/s 309 IPC, Adultery u/s 497 IPC, Sedition u/s 124-A IPC, etc, have been deleted as offences in BNS.
7. The punishment for imprisonment has been increased for 33 offences.¹⁴ For example, the penalty for death caused by negligence has been raised from 2 years to 5 years of imprisonment.¹⁵ Additionally, a harsher penalty has been introduced for failing to report a death resulting from rash and negligent driving, as well as for leaving the scene of the incident without reporting it. This can now lead to imprisonment for up to 10 years and the imposition of a fine.¹⁶
8. A new provision has been introduced in the BNS to impose stricter penalties for acts of grievous harm that lead to a persistent

⁵ Chapter IV of the Bharatiya Nyaya Sanhita

⁶ Annexure-I of the Bharatiya Nyaya Sanhita

⁷ Section 48 of the Bharatiya Nyaya Sanhita 2023

⁸ Section 304 of the Bharatiya Nyaya Sanhita 2023

⁹ Section 226 of the Bharatiya Nyaya Sanhita 2023

¹⁰ Section 111 & 113 of the Bharatiya Nyaya Sanhita 2023

¹¹ Unlawful Activities (Prevention) Act, 1967.

¹² Section 69 of the Bharatiya Nyaya Sanhita 2023

¹³ Annexure-II of the Bharatiya Nyaya Sanhita

¹⁴ Annexure-III of the Bharatiya Nyaya Sanhita

¹⁵ Section 106(1) of the Bharatiya Nyaya Sanhita 2023

¹⁶ Section 106(2) of the Bharatiya Nyaya Sanhita 2023

vegetative state or permanent disability. Offenders will now face a minimum of ten years of rigorous imprisonment, which may extend to life imprisonment (for the remainder of the person's natural life). This is an increase from the previous law under the IPC, which allowed for a maximum of seven years of imprisonment for grievous hurt.¹⁷

9. Punishment of Fine has been enhanced in 83 offences.¹⁸ Fine of 10/-, 100/-, 200/-, 250/-500/- etc. have been enhanced to 1000, 2500/-, 5000,10,000/- etc. to make the fine meaningful.
10. Mandatory minimum punishment has been introduced in 23 offences¹⁹ Viz. buying a child for prostitution, organised crime, terrorist act, hurting deter public servant in his duty, impersonating a public servant, theft, etc.
11. For the first time, "Community Service" has been introduced as a punishment for six specific petty offences listed below. This initiative reflects a reformatory approach in the punishment system, aimed at achieving justice in society.
12. The offences of assaulting or using criminal force against a woman with the intent to disrobe her,²⁰ as well as Voyeurism,²¹ have been made Gender neutral. Additionally, the laws concerning the importation of individuals from foreign countries now apply to both boys and girls. This change aims to protect minors of both genders from being subjected to forced or coerced illicit sexual activities.²²
13. The age-based parameters for differential punishment in cases of gang rape involving a minor girl have been removed. Now, Section 70(2) prescribes life imprisonment (for the remainder of the offender's natural life) or death for the gang rape of a woman under the age of 18 years.
14. A definition of "Child" has been added in Section 2 (3), and the term "Gender" in Section 2 (10) now includes transgender individuals, defining it as any person, encompassing both

male and female identities. The BNS 2023 has introduced uniformity by consistently using the term "child" throughout the document, replacing previous expressions such as "minor" and "child under the age of eighteen years" with the single term "child."

15. Movable property includes tangible as well as intangible property²³.
16. Section 303(2) of the BNS, 2023 provides a clear example of both deterrence and a reformatory approach to punishment. For a second conviction for theft, the section imposes a stricter penalty of up to 5 years in prison, with a mandatory minimum sentence of 1 year. However, if the value of the stolen property is less than 5,000 rupees and the offender is a first-time offender who returns the stolen property, the punishment is limited to community service.

KEY CHANGES IN THE BNS

Addition and alteration of certain Language and Provisions

Section 2 of the BNS has introduced a definition of "child" as any person under the age of eighteen.²⁴ Additionally, the term "transgender" has been included in the definition of "gender," encompassing individuals who identify as male, female, or transgender.²⁵ Various provisions have also been made gender-neutral, including the definition and punishment of the offense of voyeurism under the BNS.²⁶ Moreover, any electronic or digital records intended for use as evidence have been incorporated into the definition of "document".²⁷ The BNS further clarifies that all terms related to technology and digital media will carry the same meanings as those defined in the Information Technology Act of 2002.²⁸ Lastly, the definition of "movable property" has been updated as well. "Movable property" is defined as property of every description, except land

¹⁷ Section 117(3) of the Bharatiya Nyaya Sanhita 2023

¹⁸ Annexure-IV of the Bharatiya Nyaya Sanhita

¹⁹ Annexure-V of the Bharatiya Nyaya Sanhita

²⁰ Section 76 of the Bharatiya Nyaya Sanhita 2023

²¹ Section 77 of the Bharatiya Nyaya Sanhita 2023

²² Section 141 of the Bharatiya Nyaya Sanhita 2023

²³ Section 2(21) of the Bharatiya Nyaya Sanhita 2023

²⁴ Section 2(3) of the Bharatiya Nyaya Sanhita 2023

²⁵ Section 2(10) of the Bharatiya Nyaya Sanhita 2023

²⁶ Section 77 of the Bharatiya Nyaya Sanhita 2023

²⁷ Section 2(8) of the Bharatiya Nyaya Sanhita 2023

²⁸ Section 2(39) of the Bharatiya Nyaya Sanhita 2023

and items attached to the earth or permanently affixed to anything attached to the earth.²⁹

IMPRISONMENT FOR LIFE

The BNS has proposed a change to the definition of "imprisonment for life" in Section 4(b). It defines this term as "imprisonment for the remainder of a person's natural life." The Indian Penal Code (IPC), under Section 53, specifies the punishment of life imprisonment without qualification. However, certain serious offences of a sexual nature may result in imprisonment for the remainder of a person's natural life. For example, the crime of organised crime is punishable by life imprisonment as one of its possible sentences.³⁰ The legislation regarding punishment for murder by life convicts, as outlined in section 102, specifies that the two possible sentences are the death penalty and imprisonment for life, which is defined as the duration of the person's natural life. If a life sentence means confinement until the end of one's natural life, then using two different terms across the BNS creates confusion about the legislative intent. The BNS also includes the offence of a 'terrorist act,' which imposes life imprisonment without the possibility of parole as a potential punishment. This is the only provision in the BNS that explicitly restricts parole for a life sentence.³¹ Section 64(1) of the BNS defines rape as a crime punishable by a sentence ranging from ten years to life imprisonment. Section 64(2) addresses aggravated forms of rape, which are also punishable by a sentence of life imprisonment, extending for the natural life of the offender. Additionally, section 101(1) of the BNS stipulates that the punishment for murder is either life imprisonment or the death penalty.

ABETMENT, CRIMINAL CONSPIRACY AND ATTEMPT

All three incomplete categories of offences—Attempt, Abetment, and Conspiracy—are now grouped in Chapter IV. Previously, they were located in different chapters. The Bill on New Sanhita (BNS) has also introduced a new offence: "Abetment outside India for an offence in India".³²

²⁹ Section 2(21) of the Bharatiya Nyaya Sanhita 2023

³⁰ Section 109(6) of the Bharatiya Nyaya Sanhita 2023

³¹ Section 113 of the Bharatiya Nyaya Sanhita 2023

³² Section 48 of the Bharatiya Nyaya Sanhita 2023

This implies that a person abets an offence under this Sanhita if they, while outside India, encourage the commission of any act in India that would be considered an offence if committed within India.

SEXUAL INTERCOURSE BY EMPLOYING DECEITFUL MEANS, ETC.

Section 69 of the BNS introduces a new offence known as "sexual intercourse by employing deceitful means." It states that anyone who engages in sexual intercourse with a woman through deceitful means or by falsely promising to marry her, without any intention of fulfilling that promise, shall be punished with imprisonment for a term of up to ten years and may also be liable to pay a fine. This provision aims to deter individuals who use deceptive tactics, such as false promises of marriage or concealment of identity, to gain consent from women for sexual intercourse. Ultimately, the aim is to protect women's rights.

GANG RAPE ON WOMEN UNDER THE AGE OF 18

The BNS has eliminated the age-based distinction in punishment for gang rape cases involving a minor girl. It mandates life imprisonment or the death penalty for those convicted of gang rape against a woman under 18 years of age. The law states that if a woman under 18 is raped by one or more individuals acting together with a common intention, each person involved will be considered to have committed the crime of rape. Consequently, they shall face punishment of life imprisonment, which means imprisonment for the remainder of their natural life, along with a fine, or potentially the death penalty.³³ Petitions challenging the constitutionality of whole life sentences are pending before the Supreme Court.³⁴

PUNISHMENT FOR MURDER

The BNS also addresses the serious issue of mob violence, murder, or serious harm committed by five or more individuals on specified grounds.³⁵ The grounds for punishment may include factors such as caste, community, place of birth, sex, race, personal

³³ Section 70(2) of the Bharatiya Nyaya Sanhita 2023

³⁴ Nikhil Shivaji Golait v. State of Maharashtra WP Crl 184 of 2022; Mahendra Vishwanath Kawchale v. Union of India WP Crl 314 of 2022.

³⁵ Section 103 of the Bharatiya Nyaya Sanhita 2023

belief, language, or any other similar characteristics. The law stipulates that when a group of five or more individuals acts in concert to commit murder based on race, caste, community, sex, place of birth, language, personal belief, or any similar grounds, each member of the group shall be punished with death or life imprisonment, and may also face fines. Special categories have been established for offences involving murder and grievous hurt committed by a group of five or more individuals based on the victim's social profile, particularly concerning their race, caste, community, sex, place of birth, language, or personal belief. Although the term "mob lynching" is not explicitly used, these offences carry a minimum punishment of seven years of mandatory imprisonment. If grievous hurt is caused by a group of five or more individuals on these grounds, the punishment is also set at seven years of imprisonment along with a fine.

PUNISHMENT FOR MURDER COMMITTED BY FIVE OR MORE PERSONS³⁶

In light of the increasing incidents of hate crimes and mob lynching across the country, the BNS now clearly states that murder committed during mob lynching will be punished. According to this provision, if a group of five or more individuals acts together to commit murder based on criteria such as race, caste or community, sex, place of birth, language, personal beliefs, or any similar grounds, each member of that group will face severe consequences. They may be punished with the death penalty or life imprisonment, and they will also be subject to fines.³⁷ Severe injuries caused by a mob of five or more people have also been punished separately under the provisions of the BNS.³⁸

CAUSING DEATH BY NEGLIGENCE

The BNS, 2023, has revised the punishment for causing death by negligence, increasing it from 2 years to 5 years of imprisonment under Section 106 (1). The updated provision states that anyone who causes the death of another person through a rash or negligent act, which does not amount to culpable homicide, shall be punished with imprisonment of either description for a term of up to five years, along with the possibility of a fine. Furthermore, if such an

act is committed by a registered medical practitioner while performing a medical procedure, the individual shall face imprisonment for a term of up to two years, in addition to being liable for a fine.

A new provision addressing hit-and-run cases has been introduced under Section 106(2) of BNS 2023. It states: "Whoever causes the death of any person through rash and negligent driving of a vehicle an act that does not amount to culpable homicide and escapes without reporting the incident to a police officer or a Magistrate immediately afterward shall face imprisonment for a term of up to ten years and will also be liable to pay a fine."

ORGANIZED CRIME

Section 111 of the BNS, 2023, introduced strict punishments for organised crime activities, including land grabbing, kidnapping, contract killing, cybercrime, extortion, trafficking in persons, goods, weapons, drugs, and financial scams. According to the section, any ongoing illegal activity such as kidnapping, robbery, vehicle theft, extortion, land grabbing, contract killing, economic offenses, cybercrimes, trafficking of persons, drugs, weapons, or other illicit goods or services, including human trafficking for prostitution or ransom, committed by an individual or a group acting together, either as part of an organized crime syndicate or on behalf of such a syndicate, will be classified as organized crime. This classification applies if the activities involve violence, the threat of violence, intimidation, coercion, or any other unlawful means to gain direct or indirect material benefits, including financial ones. Definitions for terms like "organised crime syndicate," "continuing unlawful activity," and "economic offence" are provided in the explanation following the section.

The punishment outlined in subsections (2) to (7) of this section states that anyone who attempts or commits organised crime will face life imprisonment or the death penalty. If the offence results in the death of an individual, the offender will also incur a fine of 10 lakhs rupees. For other offences, the punishment will be a minimum of 5 years, extending to life imprisonment, along with a fine of at least 5 lakhs rupees.

³⁶ Mob lynching

³⁷ Section 103(2) of the Bharatiya Nyaya Sanhita 2023

³⁸ Section 117(4) of the Bharatiya Nyaya Sanhita 2023

An organised crime syndicate refers to a group of two or more individuals who work together, either separately or as a gang, to engage in ongoing unlawful activities. Ongoing unlawful activity is defined as any activity prohibited by law that is classified as a cognizable offence, punishable by imprisonment of three years or more. This activity can be undertaken by a person individually or collectively as a member of an organised crime syndicate, or on behalf of such a syndicate. It must involve multiple charge sheets filed before a competent court within the last ten years, and the court must have taken cognisance of the offence. This category also includes economic offences.

Economic offences encompass crimes such as criminal breach of trust, forgery, counterfeiting of currency notes, bank notes, and government stamps. It also includes hawala transactions, mass-marketing fraud, running fraudulent schemes to deceive numerous individuals, or engaging in any actions intended to defraud banks, financial institutions, or any other organisations to obtain monetary benefits in any form.

TERRORIST ACT

The Bharatiya Nyaya Sanhita of 2023 introduces strict punishments for committing acts of terrorism. The law defines a terrorist act as any action performed with the intent to threaten, or likely to threaten, the unity, integrity, sovereignty, security, or economic security of India. It also includes actions intended to instil fear or that are likely to instil fear among the people in India or any foreign country.³⁹ It may be noted that presently, offences relating to terrorism are dealt with under the UAPA.⁴⁰ In this regard, i.e. providing a law for prosecution of terror offences, the UAPA is a descendant of the repealed laws - the TADA.⁴¹ And the POTA.⁴² Terrorism was incorporated into the Unlawful Activities (Prevention) Act (UAPA) through an amendment in 2004, following the repeal of the Prevention of Terrorism Act (POTA). According to Section 113 of the UAPA, anyone who commits an offence related to terrorism can be sentenced to a minimum of 5 years of imprisonment, which may extend to life imprisonment, along with

a fine. If the offence results in the death of any person, the offender may face the death penalty or life imprisonment, in addition to a fine.

IMPORTATION OF A GIRL OR A BOY FROM A FOREIGN COUNTRY

Another important provision, Section 141, states that the offence related to the importation of a person from a foreign country has been made gender-neutral, applying to both boys and girls. This change aims to protect minor boys and girls from being subjected to forced or seduced illicit intercourse. Those found guilty will face a punishment of up to 10 years in prison and a fine.

ACTS ENDANGERING THE SOVEREIGNTY, UNITY AND INTEGRITY OF INDIA

In addition to this, the BNS removed the section related to sedition⁴³ And upheld the constitutional right to freedom of speech and expression. It introduced a new provision, Section 152, which states that anyone who purposely or knowingly uses words, whether spoken or written, or signs, visible representations, electronic communications, financial means, or any other method to incite or attempt to incite secession, armed rebellion, or subversive activities; encourages feelings of separatism; endangers the sovereignty, unity, or integrity of India; or engages in any such acts shall be punished with life imprisonment or imprisonment for up to seven years, along with a possible fine.

COMMUNITY SERVICE AS PUNISHMENT

For the first time, Section 4(f) of the BNS introduces "community service" as a punishment for six specific offences. Community service has been established for various "petty" offences under BNS. While the introduction of community service represents a significant change in criminal law in India, the criteria for selecting these offences are unclear, and there is no definition of the duration of community service sentences. The six offences include a public servant unlawfully engaging in trade,⁴⁴ Non-appearance in response to a proclamation published under subsection (i) of section 84 of BNS is punishable,⁴⁵ Attempt to

³⁹ Section 113 of the Bharatiya Nyaya Sanhita 2023

⁴⁰ Unlawful Activities (Prevention) Act, 1967.

⁴¹ Terrorist and Disruptive Activities (Prevention) Act, 1987.

⁴² Prevention of Terrorism Act, 2002.

⁴³ Section 124A of Indian Penal Code 1860

⁴⁴ Section 202 of the Bharatiya Nyaya Sanhita 2023

⁴⁵ Section 209 of the Bharatiya Nyaya Sanhita 2023

commit suicide to compel or restrain the exercise of the lawful power of a public servant,⁴⁶ Petty theft on return of theft money and a person is convicted for the first time,⁴⁷ Misconduct in public by a drunken person,⁴⁸ Defamation.⁴⁹

SNATCHING

Section 304 of the BNS has proposed a new offence of "snatching." According to this section, theft is considered snatching if the offender suddenly, quickly, or forcibly seizes, secures, grabs, or takes away any movable property from a person or their possession.⁵⁰ As per this Section, anyone who commits snatching should be punished with imprisonment, which may extend to three years and a fine.⁵¹

CONCLUSION

The Bharatiya Nyaya Sanhita, 2023, represents a significant advancement in India's criminal justice system through a modernised legal framework. Its primary objective is to consolidate and amend provisions related to offences and associated matters. This Act replaces the long-standing Indian Penal Code (IPC) and introduces a comprehensive, proactive approach to address contemporary legal and societal challenges.

The law includes several notable features that create an organised structure to tackle these challenges, reflecting a commitment to fairness and clarity. The BNS prioritises justice over mere punishment and aims to provide speedy justice, strengthening the judicial and court management system while emphasising 'access to justice for all.

While the IPC served as a foundational legal document, the BNS seeks to enhance the effectiveness of criminal law, particularly in terms of protecting women and children. Additionally, the new laws recognise electronic and digital records as valid forms of evidence, providing them with legal backing. The government must create widespread awareness of these new criminal laws among the public.

⁴⁶ Section 226 of the Bharatiya Nyaya Sanhita 2023

⁴⁷ Section 304(1) of the Bharatiya Nyaya Sanhita 2023

⁴⁸ Section 355 of the Bharatiya Nyaya Sanhita 2023

⁴⁹ Section 356 of the Bharatiya Nyaya Sanhita 2023

⁵⁰ Section 303(2) of the Bharatiya Nyaya Sanhita 2023

⁵¹Section 304(2) of the Bharatiya Nyaya Sanhita 2023