

Bharatiya Nyaya Sanhita: An Overview

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- The Bharatiya Nyaya Sanhita, 2023 (“**BNS**”) was enacted on December 25, 2023, repealing and replacing the Indian Penal Code, 1860 (“**IPC**”) as the new penal code of the country.
 - The three new Laws Bharatiya Nyaya Sanhita, Bharatiya Nagarik Suraksha Sanhita and the Bharatiya Sakshya Adhinyam- will come into effect from July 1,2024, the Ministry of Home Affairs has released notification regarding the same.
 - Object and Reasons: Need for change. The IPC continued as a relic of pre-independence British-era housing outdated provisions that did not align with the evolving modern rights and inclusion based discourse.
 - Why the name Bharatiya Nyaya Sanhita 2023? Indianization of British Laws, a message to the people, from punishment as core to justice as the core

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- The Chief Justice of India has recently hailed the three new laws and called that it “a watershed moment”.
 - To put forth the govts perspective, Dr. Rajiv Mani Secretary, Department of Legal Affairs, Ministry of Law and Justice has said “The existing criminal laws which trace their origin to the colonial era need to come out and define the State- Citizen relationship not based on colonial prejudices and practices but on the principles of access of justice to all . The three laws have hence been enacted to overhaul the criminal justice system in the country to make it citizen-centric.
 - Solicitor General of India Sh. Tushar Mehta emphasises upon the historical necessity of change(PIB Press Release <https://pib.gov.in/PressRelease>)

Scheme of the BNS

- Overall there are 20 chapters under the BNS.
- The Chapters and offences against women and children, murder have been given precedence. Further, the offences against women and children which were scattered throughout in the erstwhile Penal Code, 1860 have been brought together and have been consolidated under Chapter-V.
- In the same manner, the offences affecting the human body are also brought up in the order and placed after the Chapter on offences against women and children.
- BNS has been streamlined and it will now consist of only 358 Sections as opposed to 511 Sections in IPC, 1860.

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- Fines in the IPC were very low ranging from Rs.10 to Rs. 1,000. Similarly, the punishments for various offences also needed rationalization. Hence, terms of imprisonment for 33 offences have been suitably enhanced, fines in 83 cases have been increased and mandatory minimum punishment has also been introduced in 23 many offences.

	Old Indian Penal Code, 1860	Bharatiya Nyaya Sanhita, 2023
Provisions	511	358
Additions	N/A	31
Deletions	N/A	19
Modifications	N/A	Community Service for 6 offences. Minimum Punishment for 25 offences.
Imprisonment	N/A	Increased for 41 Sections
Penalty	N/A	Hiked in 82 Sections

Definitions [Section 2 of BNS/Sections 8 to 52A of IPC]

- Most of these interpretation clauses in sections 8 to 52A of IPC, 1860 have been retained in BNS without any change and have been consolidated in section 2 of BNS in alphabetical dictionary sequence for ease of reading and reference.
- It must be noted that the applicability of these interpretation rules in BNS is subject to requirements of the context of a provision as all definitions in BNS in section 2 are subject to the qualificatory phrase “unless the context otherwise requires”. The applicability of interpretation clauses in sections 8 to 52A of IPC, except definitions in sections 9, 32 and 46, were not made subject to contextual requirements.

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- Section 2(3) of BNS defines 'child' to mean any person below the age of 18 years.
 - Section 2(8) of BNS provides that documents include 'electronics and digital record'.
 - Definition in section 2(10) expressly refers to transgender and defines the term which was not the case in section 8 of IPC.
 - Section 2(16) – "Judge" The new law's definition of "Judge" is more concise and follows a similar pattern.
 - Section 49 of IPC required year or month to be reckoned as per British calendar while section 2(20) of BNS requires year or month to be reckoned as per the Gregorian calendar.

Community Service

- Section 4(f) of BNS has introduced a new form of punishment – Community service for the first time.
- Object is 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. [PIB Press Release, dated 20-12-2023]
- BNS prescribes Community Service as punishment for petty offences like non-appearance in response to a proclamation, attempt to commit suicide, to compel or restraint exercise of lawful power of public servant, petty theft on return of theft money, misconduct in public by a drunken person, defamation, etc.
- The term “community service” is not defined in BNS. However, it is defined by Explanation to section 23 of BNSS 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.
- Community Service is a step towards reformatory justice.

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- The punishment of imprisonment for life has been clearly defined as imprisonment for remainder of a person's natural life.
 - Consequent upon introduction of new punishment of community service [See section 4 of BNS] by the BNS, sub-sections (4) and (5) of section 8 of BNS provide for imposing imprisonment in default of community service.
 - **Fine of community service, default in payment of**
 - Under BNS for default in payment of fine or default of community service following punishment follows:
 1. Fine not exceeding ` 5000 or community service – Imprisonment not exceeding 2 months
 2. Fine not exceeding ` 10,000 or community service – Imprisonment not exceeding 4 months
 3. In any other case – Imprisonment not exceeding 1 year

Abetment Outside India for Offence in India (New) [Section 48 of BNS]

- Section 48 of BNS provides that a person abets an offence within the meaning of this Sanhita who, without and beyond India, abets the commission of any act in India which would constitute an offence if committed in India.
- Abetment by a person outside India has been made an offence under section 48 to allow prosecution of person located in foreign country.
- Section 117 of IPC provided for imprisonment upto 3 years or fine or both. Section 57 of BNS provides for imprisonment of either description for a term which may extend to 7 years and fine.

OFFENCES AGAINST WOMEN

- Exception 2 to section 63 of BNS provides that sexual intercourse or sexual acts by a man with his own wife, the wife not being under 18 years of age, is not rape. Under section 375 of IPC the age limit was 15 years.
- Section 65 of BNS combines both age categories (under 12 and under 16) into a single section, simplifying the legal framework.
- Section 69 BNS: Whoever, by deceitful means or by making promise to marry to a woman without any intention of fulfilling the same, has sexual intercourse with her, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.
- Explanation.—“deceitful means” shall include inducement for, or false promise of employment or promotion, or marrying by suppressing identity.

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- Death sentence was provided under section 376DB of IPC for gang rape of woman under 12 years of age. No death penalty was provided for gang rape of woman aged below 16 but above 12 in section 376DA. Now, section 70(2) of BNS provides death penalty for gangrape of woman under 18 years of age.
 - Word “whoever” is used in sections 76 and 77 of BNS. Earlier word ‘man’ was used in section 354B/354C of IPC
 - Section 84 BNS: Whoever takes or entices away any woman who is and whom he knows or has reason to believe to be the wife of any other man, with intent that she may have illicit intercourse with any person, or conceals or detains with that intent any such woman, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both. (498 IPC)

Against Children: Changes in Trafficking

- The act of hiring, employing, or engaging a child to commit an offence, is made a punishable offence under Section 95 of BNS 2023, which entails punishment of imprisonment of minimum seven years, extendable to ten years.
- Section 366A of IPC provided for offence of procurement of minor girl (under the age of eighteen years). Section 96 of BNS deals with offence of procurement of any child below the age of eighteen years (irrespective of gender).
- Word 'child' is substituted for 'person' in section 99 of BNS (373 IPC). Imprisonment prescribed is 'not less than 7 years but which may extend to 14 years'. Earlier prescribed imprisonment was 'ten years'.

Mob Lynching [Section 103(1) of BNS/Section 302 of IPC]

- Section 103(2) of BNS is a new provision which provides criminal liability and punishment for killing in a mob.
- Section 103(2) of BNS provides that when a group of five or more persons acting in concert commits murder on the ground of race, caste or community, sex, place of birth, language, personal belief or any other ground each member of such group shall be punished with death or with imprisonment for life, and shall also be liable to fine.
- Supreme Court has also laid down guidelines in Tehseen S Poonawala case on Mob Lynching.

REVIVAL OF IPC 303 REPEALED IN MITHU

- 104. Whoever, being under sentence of imprisonment for life, commits murder, shall be punished with death or with imprisonment for life, which shall mean the remainder of that person's natural life.
- In *Mithu v State of Punjab* the Supreme Court has held Section 303 IPC unconstitutional.
- The new change provides the alternate punishment and saves it from the earlier anomaly.

Culpable Homicide not Amounting to Murder, Punishment for [Section 105 of BNS/Section 304 of IPC]

- Section 105 substitutes section 304 for punishments in cases of Culpable homicide not amounting to Murder. It provides for statutory minimum of 5 years as there was no minimum punishments earlier under IPC in this case.
- **Section 105** Whoever commits culpable homicide not amounting to murder, shall be punished with imprisonment for life, or imprisonment of either description for a term which shall not be less than five years but which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death; or with imprisonment of either description for a term which may extend to ten years and with fine, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

CAUSING DEATH BY NEGLIGENCE: Hit and Run cases

- This provision is kept in abeyance for the time being
- **106.** (1) Whoever causes death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine; and if such act is done by a registered medical practitioner while performing medical procedure, he shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine.
- Explanation.— For the purposes of this sub-section, “registered medical practitioner” means a medical practitioner who possesses any medical qualification recognised under the National Medical Commission Act, 2019 and whose name has been entered in the National Medical Register or a State Medical Register under that Act.



(2) Whoever causes death of any person by rash and negligent driving of vehicle not amounting to culpable homicide, and escapes without reporting it to a police officer or a Magistrate soon after the incident, shall be punished with imprisonment of either description of a term which may extend to ten years, and shall also be liable to fine.

The Courts have been using section 304 in certain cases of Hit and Run in order to meet the ends of justice.

New Offence of Organised Crime

- **111. (1)** 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, shall constitute organised crime.

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- Explanation.—For the purposes of this sub-section,—
 - (i) “organised crime syndicate” means a group of two or more persons who, acting either singly or jointly, as a syndicate or gang indulge in any continuing unlawful activity;
 - (ii) “continuing unlawful activity” means an activity prohibited by law which is a cognizable offence punishable with imprisonment of three years or more, undertaken by any person, either singly or jointly, as a member of an organised crime syndicate or on behalf of such syndicate in respect of which more than one charge-sheets have been filed before a competent Court within the preceding period of ten years and that Court has taken cognizance of such offence, and includes economic offence;

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- (iii) “economic offence” includes criminal breach of trust, forgery, counterfeiting of currency-notes, bank-notes and Government stamps, hawala transaction, mass-marketing fraud or running any scheme to defraud several persons or doing any act in any manner with a view to defraud any bank or financial institution or any other institution or organisation for obtaining monetary benefits in any form.

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- (2) Whoever commits organised crime shall,—
 - (a) if such offence has resulted in the death of any person, be punished with death or imprisonment for life, and shall also be liable to fine which shall not be less than ten lakh rupees;
 - (b) in any other case, be punished with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine which shall not be less than five lakh rupees.

Petty Organised Crime

- **112. (1)** Whoever, being a member of a group or gang, either singly or jointly, commits any act of theft, snatching, cheating, unauthorised selling of tickets, unauthorised betting or gambling, selling of public examination question papers or any other similar criminal act,
is said to commit petty organised crime.

Explanation.—For the purposes of this sub-section "theft" includes trick theft, theft from vehicle, dwelling house or business premises, cargo theft, pick pocketing, theft through card skimming, shoplifting and theft of Automated Teller Machine.

(2) Whoever commits any petty organised crime shall be punished with imprisonment for a term which shall not be less than one year but which may extend to seven years, and shall also be liable to fine.

Terrorist Act: New Offence

- Section 113 of the BNS provides for the offence of Terrorist Act.
- Explanation.—For the removal of doubts, it is hereby declared that the officer not below the rank of Superintendent of Police shall decide whether to register the case under this section or under the Unlawful Activities (Prevention) Act, 1967.
- Issues of Overlap with UAPA (General Law later in time, prevails over the earlier Special Law if it clearly and directly supersedes the said Special Law, R S Raghunath v State of Karnataka 1991 SC)

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- A new provision 117(3) has been introduced in the BNS, 2023 to provide stringent punishment for such acts of grievous hurt which results in persistent vegetative state or in permanent disability. If grievous hurt resulting in persistent vegetative state or in permanent disability, it will attract higher punishment of rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life (remainder of that person's natural life) as against up to seven years imprisonment only for grievous hurt.

Sedition no more an offence

- The Section 124 A relating to sedition was argued to be misused and has been deleted in the BNS, 2023. Even though the Law Commission of India in its 279th Report has argued for retaining the provision.
- The Supreme Court of India, in S.G. Vombatkere v. Union of India on May 11, 2022, had directed all State governments and the central government to keep in abeyance all pending trials, appeals, and proceedings with regard to Section 124A IPC, as prima facie it felt that this Section was not in tune with the current social milieu.
- A new section on acts of secession, armed rebellion, subversive activities, separatist activities or endangering sovereignty or unity and integrity of India has been added and made punishable under Section 152 in BNS, 2023. In this section, exciting or attempt to excite any of the acts mentioned hereinabove is made punishable with imprisonment extendable to seven years or imprisonment for life.

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- **152.** 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.

Explanation.—Comments expressing disapprobation of the measures, or administrative or other action of the Government with a view to obtain their alteration by lawful means without exciting or attempting to excite the activities referred to in this section do not constitute an offence under this section.

- Note: the move by the government is in line with a recommendation made by the Law Commission of India in June 2023, with the alternative punishment for the offence being sought to be enhanced to seven years in jail from the present three under the IPC

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- The offence of 'attempt to commit suicide' has been deleted in the BNS, 2023. This brings the law in line with the Mental Healthcare Act, 2017. A new Section 226 has been added in the BNS, 2023 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.
 - Section 226: Whoever attempts to commit suicide with the intent to compel or restrain any public servant from discharging his official duty shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both, or with community service.

Scope of aggravated Theft widened

- The domain of offence of theft has been expanded to include theft of vehicle, theft from vehicle, theft of government property and theft of idol or icon from any place of worship. In Section 305 of the BNS, 2023 such thefts have been made punishable with punishment up to 7 years.
- **Snatching as a new offence:**
- 304. (1) Theft is snatching if, in order to commit theft, the offender suddenly or quickly or forcibly seizes or secures or grabs or takes away from any person or from his possession any movable property.
- (2) Whoever commits snatching, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Deterrent/ Reformative approach

- (2) Whoever commits theft shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both and in case of second or subsequent conviction of any person under this section, he shall be punished with rigorous imprisonment for a term which shall not be less than one year but which may extend to five years and with fine:
- Provided that in cases of theft where the value of the stolen property is less than five thousand rupees, and a person is convicted for the first time, shall upon return of the value of property or restoration of the stolen property, shall be punished with community service.

Mischief

- The offence of mischief in Section 324 of BNS has been expanded and causing loss or damage to any property including the property of Government or Local Authority has been made punishable offence with imprisonment extendable up to one year, or with fine, or with both (as against just 6 months or with fine, or both for offence of mischief). In case of loss or damage is of more than 20,000 rupees but less than one lakh rupees the punishment is extended up to two years, or with fine, or with both. Where loss or damage is above one lakh rupees the punishment would be imprisonment extendable up to five years, or with fine, or with both.

False information Imputations, assertions prejudicial to national integration.

- In Section 197(1)(d) of BNS, the act of making or publishing false or misleading information which has tendency to jeopardise the sovereignty, unity and integrity or security of India has been made punishable with imprisonment up to 3 years or fine or both.
- In section 116 of the BNS, 2023 the number of days provided for the sufferer in severe bodily pain for the purpose of 'grievous hurt' has been reduced from '20 days' to '15 days'. It is done keeping in view the advancement in the medical treatment which provides quicker recovery.

What has not found any place?

- There is no substitute for Section 377 under the Sanhita.
- *Navtej Singh Johar* had only partially decriminalised Section 377.
- The Standing Committee on Home Affairs (2023) has recommended re-introducing this provision.

Way Forward

- The Chief Justice of India has said that “while the three criminal laws create provisions which are synchronised to our times, there is a need for creation of adequate infrastructure for all stakeholders to derive benefit from these laws fully. He highlighted the creation of digital court infrastructure to create technologically equipped court systems for efficient case management for all.
- Laws and their implementation are an ever-evolving area. There is no finality to any law or the manner of its implementation. However, one must be willing to embrace positive changes to meet the needs of the times.

THANK YOU