

## AN ANALYSIS OF MAJOR CHANGES INTRODUCED IN BHARTIYA NYAYA SANHITA, 2023

### INTRODUCTION

When the entirety of India, under the present government, has been realising the long-awaited promises of removing the British shackles of legislation, Thomas Babington Macaulay's Indian Penal Code, 1860, stands to be substituted slowly by its Indian Successor, Bharatiya Nyaya Sanhita, 2023 (45th Act of 2023). Since eras and decades have passed without careful, comprehensive, and total amendment of the act, let us understand what the new penal legislation holds about modern-day crimes and the ones that have stood through time within the Indian society.

#### Precursor - Indian Penal Code, 1860

- The Indian Penal Code was doing just fine for daily offences like theft and fraud. But modern-day criminals use modern-day methods, alien to our ancient justice system. For this, several legislations had sprung up, rather than an entire amendment in the most used code of the country, the likes of Information Technology Act, 2000, Narcotic Drugs and Psychotropic Substances Act, 1985, Environment Protection Act, 1986, Air (Prevention and Control of Pollution) Act, 1981 and more.
- It lacked the gender neutrality of offences and defined men and women only, entirely excluding the third, entirely out of the equation of criminal and civil considerations. The obvious exclusions are the sections including the Monarchy, i.e., The Queen, which was to be taken out. The section of sedition (124A) is also as archaic as the code itself (as even the British have excluded that from their penal code). Section 377, or unnatural sexual offences, often used to criminalise non-cisgender sexual intercourse, has been omitted after the *Navtej Singh* judgement, showing that the legislature has been listening to the judicial decisions. Furthermore, the commission of the offence of suicide, section 309 of the IPC, held redundant under the Mental Healthcare Act, 2017, has been struck down, and instead, Section 226, BNS, is introduced, which criminalises an attempt to commit suicide to compel or restrain the exercise of lawful power.

#### Nuances - Bharatiya Nyaya Sanhita, 2023

- **Section 1 (Applicability):** BNS holds accountability for the offences not only of a domestic nature but also of those with Indian origins or domicile.

It also holds any offence in a vehicle registered in India. Most phenomenally, it accepts any Cyber base or computer resource within India and crimes committed through them (as seen by the global community of YouTube, of scam call centers, some located in Indian states).

- **Section 2 (Definition):** The main shift in the total number of sections in BNS is noticeable, 356 sections. A lesser number of sections hold more depth - usage of clauses. Section 2 holds 39 clauses, having more definitions than the previous code.
  - **Clause 30 (Special Law):** Gives ample scope to special and further legislation on different subjects, a new feature contrasting with the previous penal code.
  - **Clause 39:** holds a string with Information Technology Act, 2000. “words and expressions used but not defined in this Sanhita but defined in the Information Technology Act, 2000 and the Bharatiya Nagarik Suraksha Sanhita, 2023 shall have the meanings respectively assigned to them in that Act and Sanhita: Provided that any reference in this Sanhita to the Bharatiya Nagarik Suraksha Sanhita, 2023, shall be construed as a reference to the Bharatiya Nagarik Suraksha (Second) Sanhita, 2023.”
- **Section 3 (General Explanations):** Sections 2 and 3 helped reduce the number of sections using clauses. It holds nine clauses, and although any other section might not repeat the definitions or explanations, the sections will be applicable in toto, subject to the case.
- **Section 15 (Act by Judge Acting Judiciously):** This Section gives authority and legal safety to judges to work and produce judgements without the fear of a legal loophole that might hold them as criminals.
- **Section 23 (Intoxication):** Intoxicated, as a defence, can now be only used if one is forcefully intoxicated, and not merely via enmity or intent, but also via knowledge of the action which might cause harm. The nuances of knowledge and intent are to be deliberated on a case-by-case basis, setting out more work for the justice system, but a more just way to determine the consequences of who's wrong and who's right.

## New Offences

- **Section 69 (Literally Sexual Intercourse by Employing Deceitful Means):** One of the most distinct features of the Bharatiya Nyaya Sanhita, 2023, and one of the most discussed, in Contemporary Legal Media, is Section 69, which criminalises sex by deceitful means, and under the

promise of marriage, on a woman. Here, deceitful is defined inclusive of Inducement for, or shadowy promises of employment and/or promotion, or marriage by suppressing the identity to society.

This will be a significant step towards recognising the POSH, or Prevention of Sexual Harassment (at the workplace), especially where there are instances in several cases of POSH that a grievance redressal committee (Internal Complaints Committee) is not sufficient due to an institution's biases.

[It is to be noted that Asura Vivah and its instances (Pakadua Vivah), in Purnia, Banka, and similar places in Bihar, although held null and void of the nature of the marriage in some courts, are not considered a crime here. Another Important Factor missed out, is Male Rape, and the instance that sexually wooing men or putting coercion in the equation is completely negates in the BNS, The same loophole inherited from The IPC]

- **Section 101 (Culpable Homicide is Murder under the Given Circumstances):** It is proposed to insert Exceptions 1 to 5 to provide that culpable homicide is not murder.

Murder is a serious offence, and defining murder and culpable homicide will significantly increase the amount of punishment on the offender, who is held guilty under murder, efficiently, and thus such exceptions are ruled out, as, what is considered to be murder. Intent of death, Intention of injury likely causing death, by cause or sufficient enough to cause death by nature, and knowledge of the lethality of the action by the one committing it.

- **Section 106 (Causing Death by Negligence):** Another Important Section that is included in the BNS is the death by negligence under Section 106 BNS, which punishes any action that does not amount to culpable homicide but causes death or severe injury leading to death. It has a lot of prospects and includes the matters of medical negligence as well.
  - Section 106(1) of the BNS has increased the punishment for death resulting from a rash or negligent act not constituting culpable homicide from 2 to 5 years, along with a fine. Medical Professionals shall be punished with imprisonment for a period up to 2 years, along with a fine for death due to negligence.
  - Section 106(2) refers to death due to rash and negligent driving of a vehicle not constituting culpable homicide. If a driver avoids reporting the death to a Police Officer or Magistrate shall be liable for imprisonment for a term which may extend to 10 years and also for a fine.

- A lot more focused on the hit-and-run section, as rash and negligent driving and non-reporting of the case to a police or a magistrate, along with escapism, amount to a jail term up to 10 years with a fine levied. Reported or not, one will be taken under custody, extendable to 7 years plus a fine, which can be deliberated in a court of law. Currently, after a lot of opposition and a campaign against the imprisonment mentioned in this particular section 106(2), this section is on hold and not in effect as of the date of writing this article.
- **Section 111 (Organised Crime):** (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.

UAPA and other Inclusive acts have criminalised several aspects of the section, but this is an inclusive section, which will see a lot of filings from multiple genres, ranging from kidnapping or wrongful constraint to economic offences and anything organised in nature. This will be useful to convict a sentient mob or groups of criminals, with Imprisonment for life and/or death along with a compensatory fine. Notice how cybercrime, gang-based violence, and drug trafficking can be brought under one umbrella.

- **Section 112 (Petty Organised Crime):** While Section 111 deals with major crimes, which cause major monetary, physical or moral damage to the society, even petty crimes like organised pick-pocketing, theft, snatching, black-market selling of tickets, unauthorised betting or gambling, and an offence of leaking public examination paper, brought under the scope of law. Thus, a more inclusive and diverse approach to law has been taken, and the interpretation of such law is crucial, along with implementation at the ground level. This act may lead a gang member to jail for anywhere between one to seven years in jail, with a fine.
- **Section 113 (Terrorist Act):** Just like in the section, usage of force and coercion to earn something via unfair means may have an element of instilling fear. AFSPA, UAPA, and similar laws have come before, and so

have laws to maintain public safety, including 144 CrPC's curfew. For the first time, BNS has recognised this under section 113, considering the usage of bombing, explosives and dynamite, and firearms or other means which are likely to cause death or loss of property or damage to the stability, integrity and sovereignty of the Indian Union and its State Governments. All forms of Terror or unfair and lethal conditionality against the State are considered under this section, which might see a replacement to UAPA. Will it be constitutionally challenged? Only time may tell, as a not-so-proportionate usage of UAPA was previously used before to crush demonstrations. However, India is a democratic country, and the Right to protest peacefully is still available to dissenters.

The no-tolerance principle towards terrorism was in the ruling party's manifesto, and thus, was brought in here as a law.

- **Section 123 (Drug Abuse/ Alteration):** If via Administering a substance with the intent of committing a crime, likely, causing harm or death, or facilitating a crime is an offence punishable up to 10 years with a fine. Offences like the usage of date-rape drugs (*Jemma Ewin vs. Claudio Vergara (05.12.2013 - AUFC)*) can finally be criminalised, thanks to this section.
- **Section 304 (Snatching):** The crime of snatching has been added under Section 304, as per which theft constitutes snatching if, to commit theft, the offender forcibly or suddenly or swiftly seizes or secures or grabs or takes away from any person or from his custody any immovable property. Whoever commits snatching shall be punished for a term which may extend to three years and shall also be subject to a fine.
- **Section 226 (Attempt to Commit Suicide to Compel or Restrain Exercise of Lawful Power):** The crime of suicide, Section 309 of the IPC, being found redundant under the Mental Healthcare Act, 2017, has been invalidated, and in its place, Section 226, BNS, comes into effect, criminalizing an attempt to commit suicide with intent to force or restrain the exercise any public servant from discharging his duty shall be punished with imprisonment for a term which may extend to 1 year, or with fine, or with both or community service.
- **Section 152 (Act Endangering Sovereignty, Unity and Integrity of India):** The most controversial section, sedition, which was included in the IPC, has been deleted from the BNS. Section 152 has replaced sedition. Section 152 criminalises people who do things that jeopardise the sovereignty, unity, and integrity of India. The punishment under this

section can be enhanced to life imprisonment. On comparing the old sedition section of IPC with the new section, it can be seen that the terms 'electronic communication' and 'use of financial means', and 'endangering sovereignty, unity and integrity of India.

By comparing the sedition law under IPC and the new section 152 under BNS, we can see the following changes being enacted by the legislature:

- Sedition law under IPC punished individuals for committing acts that were creating disaffection against the government, while the BNS speaks of punishing individuals who commit acts that jeopardise the unity and sovereignty of India.
- The punishment under IPC was to be three years, while the BNS provides such imprisonment for life or with imprisonment which may extend to seven years, and shall also be liable to a fine.
- **Section 95 (Hiring, Employing or Engaging a Child to Commit an Offence):** A new addition to Section 95 has been added in the Bharatiya Nyaya Sanhita, 2023 criminalizing the hiring, employment, or engagement of a child to commit an offense which also includes using or exporting a child for pornography and provides for a punishment that may extend to 10 years along with fine as if such person himself had committed the offense.
- **Section 197(1)(d) (Imputations, Assertions, Prejudicial to National Integration):** Section 153(b) of the IPC concerning imputation, assertion prejudicial to national integration did not cover publishing of false or misleading information which is now included under section 197(1) (d) of BNS, which carries a maximum punishment of three years or fine or both for making or publishing false or misleading information, threatening the sovereignty, unity and integrity or security of India.

## CONCLUSION

With much legal deliberation, our Legislative department has come up with The Bharatiya Nyaya Sanhita. It is a good first step towards making India legally reliant on Indian perspectives and not colonially drafted and amended. Recently, instances of a lack of readability of the name have come up. Whatever legal issues crop up next have to be dealt with Judiciously and in the best interest of the people of India. Training and updating of the enforcement is also crucial, along with the judges and officers of law, and the students have a humongous task of learning and deliberating both the IPC and BNS. Only then can a successful Indian Penal Code transition be made.