

## UNVEILING BSS: THE NEW VERSION

**AUTHOR** – POOJA.S, STUDENT AT ICFAI LAW SCHOOL, HYDERABAD

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### ABSTRACT

The New criminal code was first introduced by the Centre on August 11 last year following which they were referred to a 31-member Parliamentary Standing Committee headed by BJP MP Brij Lal for review. The revised Bill was later introduced in the Lok Sabha by Union Home Minister Amit Shah on December 12th and received Presidential assent on December 25th.

On July 1<sup>st</sup>, The Indian Penal Code was replaced with a more technology driven, justice-based foundation of Bharatiya Nyaya Sanhita. Many factors were taken into consideration like societal, political, technological, cultural etc while sculpting this new law. The changing era and differences over the centuries demand addition, deletion and replacement of provisions which is being achieved by BSS.

The new law focuses on justice rather than punishment and is aimed at providing speedy justice, all the way, strengthening the judicial and court management system emphasising "access to justice by all".

This article helps us identify the major changes which is brought upon with the New Penal Law.

### THE BASICS

**Number of sections:** The Indian penal code consisted of 511 sections which will now be renovated with Bharatiya Nyaya Sanhita which consists of 358 sections.<sup>931</sup>

**Chapters:** Abetment, criminal conspiracy and attempt of abetment which were in separate chapters are brought together in Chapter 4 of BNS.

All offences against women and children are streamlined in Chapter 5 of the new act making it easier.

The New code in Chapter 10 has offences relating to coin, currency-notes, banknotes, and government stamps. In earlier act, the title was pertaining only to coins and government stamps.

Chapter 20 is added where the section of repeal and savings are mentioned.

### Definitions: Section 2

2 (3): **Child** is defined as a person below 18 years,

(This helps to clear the confusion while applying the provisions of law and gives clarification while trying the offenders and identify the victims)

2(8): "**document**" means any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, and includes electronic and digital record, intended to be used, or which may be used, as evidence of that matter.

(This definition has been modified to add electronic and digital record)

2(10) "**gender**". –The pronoun "he" and its derivatives are used of any person, whether male, female or transgender.

(The word "Transgender" has been added)

<sup>931</sup> The Hindu News article on "Revised criminal law bills: Key changes explained"

2 (21) “**movable property**” includes property of every description, except land and things attached to the earth or permanently fastened to anything which is attached to the earth

(It does not mention about corporeal property like in old act) 2 (39) 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. (added)

**DELETIONS MADE:** Section 29A (electronic record), 18 (India), 14 (Servant of Government), 50(Section) from the old act are removed in the new act.

#### **QUICK HIGHLIGHTS- ADDITIONS AND DELETION**

##### **(CHRONOLOGICAL ORDER)**

**Section 53A of IPC – Construction with reference to transportation has been removed.**

Section 4 of BNS – Community service has been introduced as punishment.

It has been specifically provided 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. This brings a new light in practical application of reformatory theory.

Section 48 of BNS – Talks about abetment of offence outside India for offence in India has been added. This new addition expands the jurisdiction of India to try offenders.

. Section 69 of BNS – Introduced offence in which having sexual intercourse on false promise of marriage, employment, promotion or by suppressing the identity etc. has been Criminalized. Imprisonment given up to 10 years and fine. <sup>932</sup>

Section 70 of BNS – The offence of gang rape has included gang rape of women under 18

years by substitution separate offences in old act (women under 16 years and 12 years). Imprisonment of life is given as punishment under this included sub section. <sup>933</sup>

Therefore, stringent punishment is given to the offenders and offers stronger protection to minor girl children.

Section 76 & 77 of BNS – These sections change the word “Any man” to “whoever” which widens the provision to bigger ambit of offenders

**Section 377 of IPC has been removed and not included in new act. It talks about unnatural offences and punishment to it.**

**Section 497 of IPC – adultery has been removed. Violative of fundamental rights.**

Section 95 – Hiring, employing or engaging a child to commit an offence has been added and gives them 3 years punishment. This section protects children from being used as offender.

Section 103 – includes sub section “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 similar ground each member of such group shall be punished with death or with imprisonment for life, and shall also be liable to fine”

Section 106 – subsection (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”. <sup>934</sup>

Hit and run cases are been included by this provision. This shall make the citizens to be more careful and diligent while driving and also protects the victim with immediate reporting of

<sup>932</sup> Deccan Herald News Article on “Are Indian men in trouble because of new criminal laws? Experts feel Section 69 of Bharatiya Nyaya Sanhita a perfect 'recipe for misuse'”

<sup>933</sup> SCC Online Article on “Key Highlights of the three new criminal laws introduced in 2023”

<sup>934</sup> Drishti IAS News Analysis on “Concerns over hit and run law”

incident. This helps the offenders to not escape from their duties.

#### Section 111, 112 and 113 –

Sections 111 and 113 of the BNS 2023 punish the commission, attempt, abetment, conspiracy of organized crimes and terrorist acts respectively.

Both the Sections also punish the act of being “a member of any organized crime syndicate or terrorist organisation, harbouring or concealing any person who committed any organized crime or terrorist act and the act of possessing any property derived or obtained from the commission of organized crime or terrorist act”.

Section 113 on terrorist act has been enacted taking UAPA into account. It specified that in case of the offence of terrorist act officer not below the rank of SP will decide whether to file a case under the provisions of BNS, 2023 or UAPA.

Section 117 – Sub section 3 has been added which talks about voluntarily grievous hurt leading to permanent disability or persistent vegetative state. Sub section 4 talks about group of 5 or more acting in concert and causing grievous hurt to a person on certain grounds like caste, race sex etc.<sup>935</sup>

The scope is widened with regards to voluntary grievous hurt and motive behind the offence like caste, sex, place of birth has also been given punishment in specific.

Section 139 – Kidnapping or maiming a child has enhanced their punishment. Whoever kidnaps a child and employ or use them for purpose of begging has imprisonment not less than 20 years to imprisonment of life.

Section 141 – makes the provision of importation from foreign country for purpose of intercourse to be for boy and girl.

Section 152 – Sedition which was section 124A of IPC has been removed and replaced with this new section. Acts of secession, armed rebellion, subversive activities, separatist activities or endangering sovereignty or unity and integrity

of India has been added and made punishable with imprisonment of life or extended up to 7 years.

Sedition was criticized to be an impediment to fundamental right of freedom and expression and it brought upon a lot of controversy as opposition to government made punishable brings down the democracy.

Section 197 – Subsection(d) “makes or publishes false or misleading information, jeopardising the sovereignty, unity and integrity or security of India, shall be punished with imprisonment which may extend to three years, or with fine, or with both” was added.

Section 226 – attempt to commit suicide is replaced with attempt to commit suicide to restraint or compel exercise of lawful power and made punishable.

Section 304 – Snatching has been introduced as offence in BNS.<sup>936</sup> The section reads as follows: 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.

Section 324 – In the offence of mischief, loss of property of government or local authority is made punishable along with loss of property or damage for amount of 1 lakh or upwards.<sup>937</sup>

Section 358 – Repeal and savings are added which acts as pathway to this vital replacement. It reads as follows:

(1) The Indian Penal Code is hereby repealed.

(2) Notwithstanding the repeal of the Code referred to in sub-section (1), it shall not affect,

<sup>935</sup> NCRB Government portal on Bharatiya Nyaya Sanhita, 2023

<sup>936</sup> Taxmann Article on “Top 10 Changes Made by Bharatiya Nyaya Sanhita (BNS) vis-à-vis Indian Penal Code (IPC)”

<sup>937</sup> Legal service India Article on “Bharatiya Nyaya Sanhita, 2023: An Analysis Of Legal Reforms, Coherence Challenges, And The Quest For A Progressive Penal Code”



(a) the previous operation of the Code so repealed or anything duly done or suffered thereunder; or

(b) any right, privilege, obligation or liability acquired, accrued or incurred under the Code so repealed; or

(c) any penalty, or punishment incurred in respect of any offences committed against the Code so repealed; or

(d) any investigation or remedy in respect of any such penalty, or punishment; or

(e) any proceeding, investigation or remedy in respect of any such penalty or punishment as aforesaid, and any such proceeding or remedy may be instituted, continued or enforced, and any such penalty may be imposed as if that Code had not been repealed.

(3) Notwithstanding such repeal, anything done or any action taken under the said Code shall be deemed to have been done or taken under the corresponding provisions of this Sanhita.

(4) The mention of particular matters in sub-section (2) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 with regard to the effect of the repeal.

### **KEY TAKEAWAYS**

Perusing upon the new penal law which is the most important reformation of legal system, Key changes according to me:

1) **GENDER NEUTRAL:** It is to be noted that many provisions are made gender neutral and equal protection is being given to boys. There is also inclusion of transgender. This paves way to democratic nation where both genders are equally offered protection in required offences.

2) **CHILD PROTECTION:** Many of the sections were made focused to increase protection to Children like gang rape, abet to commit offences, kidnapping a child etc. Punishments have been

enhanced for the same. Child has also been defined in this act. Children are being misused and exploited due to their tender age. They get pushed to wrong path or become victims of the crime. This kind of provisions would bring reformation and prevent the exploitation.

3) **COMMUNITY SERVICE:** One of the best changes is addition of community service as a punishment to the offenders as it brings out empathy. It brings out the fruits of reformatory punishment rather than giving them deterrent treatment.<sup>938</sup> It is included in various provisions like unlawfully engaging in trade, non-appearance in response to proclamation, attempt to suicide in restraint/ compel of lawful authority, theft, misconduct by drunk person, defamation etc.

4) **ORGANISED CRIME:** Organized crime is being explained along with organized crime syndicate, economic offences and continuing unlawful activity. Even the membership of this type of crime syndicate is made punishable along with it is commission of the act, harbouring a member who committed, possessing any property obtained from commission etc. Cybercrimes is also included in these sections as unlawful activity A separate section explains the considerations for petty organized crime.<sup>939</sup>

5) **TERRORIST ACT:** The specifications of act which is considered as terrorist act are mentioned like the intention behind it, weapons / ammunitions used, after effects of the act – injuries, death etc are given. Conspiracy, abetment, training in camps, harbouring a person who did such an act, possessing property gained this act are made punishable.

<sup>938</sup> Lexis Nexis Article on “New Criminal Laws in India”

<sup>939</sup> Punekar News article on “Know about Major changes to new criminal laws effective July 1”

- 6) SEXUAL INTERCOURSE AND FALSE PROMISE OF MARRIAGE: Section 69 also brings upon a lot of controversy as it is criticized to open a floodgate of litigation. The section mentions about deceit but it is very hard thing to be proved. Misuse can be done with this section. It also gives 10-year imprisonment which is stringent.<sup>940</sup>
- 7) HIT AND RUN CASES: Section 106(2) talks about hit and run cases where if a person fails to report the incident to police or magistrate will face 10-year imprisonment. As India faces a large number of hit and run crash fatalities, this provision will bring positive results. Some leniency is shown to drivers who do report the case. But there are some drawbacks as there is scope of misuse by authorities and there can be some unfair blaming on drivers for incidents. It is criticized for the punishment to be stringent and conditions out of driver's control are not considered.
- 8) DISCRIMINATORY CRIMES: In some sections, there has been an addition in provision where if it is done based on sex, religion, caste, race etc, a particular punishment is given. E.g.: Voluntary grievous hurt, murder etc. It is most essential as in current state of society, gender related crimes, genocides etc are getting more prevalent and this will ensure to curb these types of crimes.
- 9) SEDITION: Sedition has been in controversy for many years as it was in conflict with fundamental right of free speech and expression and democracy. The words "hatred" and "disaffection" was given a very vague meaning and not clear about the scope. The present replacement of the section has clear specifications as to acts which are punishable under the section.

- 10) OTHERS: New crimes like snatching, mob lynching have been introduced and attempt to suicide has been made restrictive. Theft also expanded its scope to intangible items.

### **CONCLUSION**

The new act has been a major step to our nation. This step comes with lots of responsibilities and challenges as the people, functionaries and law professionals must accept this provision along with pros and cons. There is a change in numbering of sections and it is a much-known fact that for many years, the wings of government are used to the name of the code as well as are thorough with the sections. This change gives them the challenge to adapt to the new code and start applying it in their daily work. Many states are struggling with training and capacity building among the police with the new code<sup>941</sup>. The law enforcement agencies, executory personnel and the citizens must overcome the initial shortcomings to this new code and see the reaping benefits it offers to justice system.<sup>942</sup>

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