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BNS 2023: PATH OF JUSTICE OR ENHANCED PUNISHMENT?

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Abstract:

This article was primarily focus on the new criminal bill which was introduced recently and this paper was dominantly analyse the impact of implementation of the act named BNS [Bharatiya nyaya sanhita] which was came in the effect of 1st July 2024 after being passed by parliament in December and we analyse how it impact the two main agents of the government and how this act is trying to bring the justice and this article is also analysing the various new offences introduced in the BNS and covered related to the organised and cyber offences which was exclusively added in the BNS and covered the area related to the gender equality and omission of section 377 of IPC brings gender equality, this all the area that this paper covers. And we have analysed the constitutional impact of BNS as well while analysing the impact of the two main agent of the government and we have touched about the increase in punishment various offence and new short of punishment which was introduced in the act

Keywords: – Offences, punishment and justice.

IMPACT CREATED BY BNS:

There are various impact that the BNS have created specially to the offences against the woman ,children ,and etc and there are various provision were added and the punishment for various offences are increased in the BNS. Even new short of punishment was also introduced in BNS that is community service and this punishment is given only certain minor offence In the BNS, the community services were added as the punishment for the accused who had committed the crime. The Basic punishment is imprisonment and penalties but the community service means the accused person should do a service which helps the needy like building a toilet in the government schools , etc . So the BNS has introduced community service in Section 4(f) as a form of punishment in India.

“Community service is a powerful tool for rehabilitation, allowing offenders to directly give

back to the communities they have harmed.”¹⁰²⁶ and this is mainly given to youth who is doing rash and negligence driving and etc. And there are various offence the punishment was increased. And this might create a Impact the Indian society and when we compare a old code that is Indian penal code which was replaced by this BNS and main aim of introducing this BNS was to provide justice rather punishment but when we analyse the both act we come to know that there are various section for which the punishment was life imprisonment and death punishment was also introduced in various offences which clearly shows that BNS is trying to bring justice based on punishment. Here come the controversy that the title of the act itself suggest the “Naya” but the punishment for the various offence was introduced. And when we analyse

¹⁰²⁶ <https://lawfoyer.in/community-service-as-a-punishment-under-bns-provisions-theories-and-cases/>

the impact the on various agents of government especially to lawyers and police.

When we see the impact on police the old code was introduced in 1860 and practiced till 2024 means it was practised for more 150 years and sudden changes in act may create problem to the police officers and main problem which I feel was if the crime was committed by the accused on 10th June 2024 and that was found only on 2030 then BNS will in practice as per article 20 of Indian constitution the charge sheet should be filled based on old code law not on BNS so this will create a big confusion on police. And there are so much of power were given to police like to arrest without warrant on certain matters, the preventive detention provision was also strengthened which allows the police official to arrest anyone base on suspect which lead to violation of article 14 and article 20 of the Indian constitution.

And when we analyse the impact on lawyers the lawyers as the power of police was increase the police might infringe in the constitutional and fundamental right of the citizen do the lawyer duty to control the misuse of power the case for habeas corpus due strengthen of preventive detention so the legal profession has also impact due to introduction of this new bill BNS..

The BNS seems to be follow the deterrent approach means increase in the punishment leads to justice but not in all cases in Section 379 has been amended to impose harsher penalties for theft. The maximum imprisonment term has been increased from three years to five years for second or subsequent convictions. Additionally, community service has been introduced as an alternative punishment for first-time offenders whose stolen property value is less than Rs. 5,000. In contrast, Section 324 has seen an expansion of the offense of mischief, with punishment extended to imprisonment up to one year, or fine, or both. The severity of punishment increases with the

extent of loss or damage caused to property.¹⁰²⁷ but in the same provision the punishment was increased but community service also added which still creates problem to come to conclusion that BNS is trying to bring justice through punishment or not.

NEW AREAS INTRODUCED IN BNS ;

BNS has covered the new areas i.e cyber offences and organised crimes in number of ways which includes:

I) Defining the organised crime : The BNS defines organized crime as criminal activities, including cybercrimes, that are carried out by a group or person acting in concert. This is a key change from the Indian Penal Code (IPC), which did not explicitly consider the organized nature of cybercrimes.

II) Providing more rigorous punishment : The BNS is very strict in the organised crime areas so it provides the rigorous punishment for the person who has been accused such crime compared to IPC .

III) Cybercrime included as the organised crime: Nowadays the Cybercrime has become the most important crime which is prevailing in the society.

So the BNS has included the Cybercrime as the separate offence under the organised crime which includes the persons who had involved in the cybercrime like hacking, data breaches, identity theft , etc in the form of group they come under the organised crime .

As a whole, the Cybercrime and Cyber organised crime has been increasing day by day like many online financial Theft and hacking. So the punishment were also increased in the BNS as compared to IPC.

4) Gender neutrality:

"Both boys and girls could get procured for sexual exploitation. The word 'minor girl' in section 366A of the IPC has been replaced with the word 'child' in clause 96 of the BNS to cover

¹⁰²⁷ ISSN 2943-4068

both male and female children below the age of 18 years and the offence of procurement has been made punishable," was said under the new criminal law i.e BNS. It also said Section 366B in the IPC has been made gender neutral by replacing the phrase "importation of girl from a foreign country" with "importation of girl or boy from a foreign country".¹⁰²⁸

In the provision of BNS the section 377 of IPC was omitted which was previously read down by the Supreme Court. This exclusion removes provisions regarding rape of men and bestiality as offences, warranting a closer examination of the implications for gender justice and the protection of vulnerable groups.¹⁰²⁹

These are all some changes which has brought the increased and rigorous punishment which may bring us justice. Due to the increased and rigorous punishment there may be a decrease The commission of offence due to the fear on the rigorous punishments, In the chapter of offences against woman and children the punishment has been increased compared to IPC . But due to the increase in the punishment it will not always leads to justice and by the way I will not say that the increase in the punishment will lead to justice but it may be the first step for the justice.

Conclusion:

Finally i am conclude this paper by saying there may be controversy in the BNS title itself but the section and details inside the BNS was very clear and we have to wait for few years to the actual impact the impact that analysed in the paper was only the possible assumption and the main reason for implementation of BNS was Removal of colonisation but according to me the BNS does not remove the colonisation and lord Macaulay introduced the IPC by saying every one are equal even British and Indian are same so removal of colonisation might be wrong but the

changes are needed in this dynamic society and day by day the technology, and foreign relations was also introduced so the introduction of BNS is mandatory and the punishment of community service was well defined punishment which will help for rehabilitation and the organised crime was also increased which was not there in IPC but added in BNS and bns punishment was also increased in various offence the bns is trying to bring justice based on the punishment but we need to wait for the actual justice because only few months are went off. And in this paper we have also the main problem in implementation of BNS.

¹⁰²⁸ https://www.business-standard.com/india-news/sexual-offences-now-gender-neutral-as-bns-introduces-key-changes-124070300464_1.html

¹⁰²⁹ <https://ssrn.com/abstract=4677357>