

## NECESSITY OF BHARATIYA NYAYA SANHITA, 2023

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**BEST CITATION** – AARYAN PRASAD GOKHALE, NECESSITY OF BHARATIYA NYAYA SANHITA, 2023, *INDIAN JOURNAL OF LEGAL REVIEW (IJLR)*, 5 (2) OF 2025, PG. 69-70, APIS – 3920 – 0001 & ISSN – 2583-2344.

This article is published in the collaborated special issue of M.K.E.S. College of Law and the Institute of Legal Education (ILE), titled “Current Trends in Indian Legal Frameworks: A Special Edition” (ISBN: 978-81-968842-8-4).

### INTRODUCTION TO CRIME?

The general meaning of the word Crime is any act or behavior of a person which is against the provisions of Law and for that act, the Judiciary can punish the person.<sup>104</sup> There are certain circumstances under which a person commits a crime, such as a sense of revenge, extreme poverty, family conditions, etc. When a person commits a crime, it affects; 1) the Victim 2) the family of the Victim, and 3) the society.

There are two types of wrongs:

- 1) Civil Wrong- A wrong against a Private Individual.
- 2) Criminal Wrong- A wrong against the Public at large.<sup>105</sup>

Civil wrongs mean a tort & breach of contract, governed by the Law of Torts, Indian Contract Act, 1872, and various other statutes. The remedy under Civil Wrong is compensating the affected party by providing damages or providing Specific Relief under the Specific Relief Act, 1963. Under the Criminal Wrong providing damages is insufficient, the person who commits the crime must be punished for his act.

### HISTORICAL BACKGROUND OF CRIMINAL LAWS IN INDIA

The object of Criminal Laws is to decrease the Crime rate in society by convicting the accused, awarding proper punishment, and conducting the trial without delay. While diving into Criminal

Laws history we can find a religious aspect. In every religion, there were different punishments for the Criminals. Earlier the accused persons were presented before the King in his Court (Darbar) and the King was used to act like a judge.

The Britishers came to India and started reforming India's structure in various fields including the legal system. The First Law Commission drafted the INDIAN PENAL CODE, the committee consisted of Lord Macaulay (T. B. Macaulay) as head and four other members, C. H. Cameron, J. M. MacLeod, G.W. Anderson, and F. Millet. The Indian Penal Code was drafted in 1834, submitted to the Governor-General of India in 1835 and came into force on 1<sup>st</sup> January 1862. It was a comprehensive Code defining Crime, types of Crimes, and prescribing punishments for a particular crime

### GIST OF INDIAN PENAL CODE, 1860<sup>106</sup>

The Indian Penal Code was drafted by the First Law Commission to govern crimes and it was amended from time to time by keeping in mind the evolution in society, for example, amendments in crimes related to rape, amendments in crimes related to technology, etc. The Indian Penal Code, 1860 classifies offenses under four heads i.e. Cognizable, Non-Cognizable, Bailable and Non-bailable. The Indian Penal Code also provides various punishments such as death sentence, life

<sup>104</sup> Ian David Edge, 'Crime' (Britannica, 13 July 2024) <<https://www.britannica.com/topic/crime-law>> accessed 5<sup>th</sup> August 2024

<sup>105</sup> H.D. Pithawalla, 'The Law of Torts' (34<sup>th</sup> Edition 2023) 5

<sup>106</sup> Adv. Rupa K.N. 'Indian Penal Code- Understanding the Criminal Law of India' (Ezylegal) <<https://www.ezylegal.in/blogs/indian-penal-code-ipc-1860-understanding-the-criminal-law-of-india>> accessed 7<sup>th</sup> August 2024

imprisonment, imprisonment (simple or rigorous) and fine.<sup>107</sup> The severity of punishment depends upon the graveness of offenses. The Indian Judiciary plays a vital role in adjudicating matters, it is the judiciary that ensures crimes will be investigated, both parties will get a fair chance to present their side and if the accused is guilty of any offense he has to suffer punishment as prescribed for that particular crime in Indian Penal Code.

### NEED OF AMENDMENTS AND INTRODUCTION OF BHARATIYA NYAYA SANHITA, 2023

Evolution is the basic ingredient in any society, the growth in technology has advantages as well as disadvantages. Criminals also use technology for their purpose, so it is necessary to amend the present laws to tackle evolution. In 2023, we saw a major change regarding criminal laws in India. The Parliament of India passed three new criminal laws by repealing the old British-made laws. The Indian Parliament introduced BHARATIYA NYAYA SANHITA, 2023 which replaced the INDIAN PENAL CODE, 1860. The intention behind this was to step out from the colonial-era law. By focusing on the dramatic and drastic changes in the nature and methods of crime, the Parliament took this step.

### NEED OF BHARATIYA NYAYA SANHITA, 2023

As the world started evolving it also started to accept certain new terms. One of the important reasons to bring new criminal law is to repeal the outdated & colonial terms, words, and phrases and to accept the new terms. For example, Bharatiya Nyaya Sanhita, 2023 replaced the term 'minor' with 'child', 'insane' with 'person of unsound mind', etc. In other words, we can say that the new criminal law has modernized language.<sup>108</sup> The base of the new criminal law is indeed the Indian Penal Code but certain provisions are expanded and certain are newly introduced for example 'Snatching' has been introduced as a new offense, the concept

of theft is enlarged, the offense of 'mob lynching' has been defined in a specific section.<sup>109</sup>

The literal translation of the Indian Penal Code was *Bharatiya Dand Sanhita* the meaning of *Dand* means penalty, so the Indian Penal Code focuses on penalizing on the other hand Bharatiya Nyaya Sanhita focuses on the concept of Nyaya, for which the new law introduced 'Community Service' as punishment, the reason behind introducing this theory is to bring a reformative approach. One of the important factors in Bharatiya Nyaya Sanhita is, that it includes cybercrime, organized crime and terrorism. These are the factors that were not present in the Indian Penal Code, 1860 but it was extremely necessary to bring them under criminal law to protect the interest of the public at large.<sup>110</sup>

The Indian Penal Code has been in force for more than 150 years so there are certain aspects of it which become outdated and there is a need to make reforms to it, that can go with the current socio-economic conditions. The language of the Indian Penal Code, 1860 has a legal aspect to it which is a little bit difficult to interpret, this is also one of the reasons for bringing new criminal law.

### CONCLUSION

The change from the Indian Penal Code, 1860 to Bharatiya Nyaya Sanhita, 2023 i.e. the change towards the concept of 'Nyaya' by repealing the concept of 'Dand' is one of the proofs that India being a democratic country not only focuses on punishing the accused but also tries to make reforms in the behavior of accused and at the same time it also provides justice to the victim. However, it will be not an easy task to adapt to these changes, as expertise in various fields, and such infrastructure will be required but India will achieve it.

<sup>107</sup> N.H. Jhabvala, 'The Indian Penal Code' (40<sup>th</sup> Edition 2023) 84

<sup>108</sup> Ministry of Home Affairs 'The Bharatiya Nyaya Sanhita, 2023' (Prisindia, 11<sup>th</sup> August 2023) <<https://prisindia.org/billtrack/the-bharatiya-nyaya-sanhita-2023>> accessed 8<sup>th</sup> August 2024.

<sup>109</sup> Deeksha 'Decolonisation of IPC | The Paradigm shift in India's criminal justice system with the idea of Nyaya under BNS' (sconline, 1<sup>st</sup> July 2024) <<https://www.sconline.com/blog/post/2024/07/01/decolonisation-of-ipc-understanding-bharatiya-nyaya-sanhita-2023>> accessed 8<sup>th</sup> August 2024.

<sup>110</sup> 'Bharatiya Nyaya Sanhita 2023: Background, Need, Features & More' (Textbook, 02<sup>nd</sup> July 2024) <https://textbook.com/amp/ias-preparation/bharatiya-nyaya-sanhita-2023> accessed 9 August 2024.