BLOGS

Understanding Bharatiya Nyaya Sanhita, 2023: Part II

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Introduction

This is the second article in the series of articles which would deal with such changes not only in the BNS but also BNSS and BSA. This article would specifically deal with the modifications to the punishments, deletion of offences, and other relevant additions to the new Penal Code.

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Punishments under Bharatiya Nyaya Sanhita

The BNS has increased the punishment of imprisonment in almost 33 offences, including:

- Murder: As per Section 103 of the BNS, whoever commits murder shall be punished with death or imprisonment for life which means imprisonment for the remainder of a person's natural life and shall also be liable to fine.
- Causing death by rash or negligent act-106 (1) of BNS: The maximum penalty for causing death by rash or negligent act has been increased from two years to five years imprisonment. However, the maximum punishment is only up to 2 years of imprisonment, if such death is caused by a registered doctor.
- Hit and run cases- Under Section 106(2) of BNS, if a driver causes the death of a person by rash and negligent driving 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 said section is kept in abeyance at present.
- Grievous Hurt which results in persistent vegetative state or in permanent disability – 117(3) of BNS: A new provision has been introduced in the BNS to provide stringent punishment for such acts of grievous hurt which results 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 7 years imprisonment for grievous hurt earlier in IPC.

- Mischief: This offence has been given specific pecuniary limits in sub-sections (4) and (5) of Section 324 of the BNS, wherein the amount of imprisonment increases as the value of the property destroyed or converted increases.
- Removal of age based parameters: Age based parameters for differential punishment (for gang rape of a minor girl) has been removed and now Section 70(2) of BNS prescribes life imprisonment (till remainder of that person's natural life) or death for gang rape of a woman below the age of 18 years.

Fine as another form of punishment has also seen modifications in around 83 offences. The earlier colonial fines of 10/-, 100/-, 200/-, 250/-500/- etc. have been increased to 1000/-, 2500/, 5000/- ,10,000/- etc.to make the fines in line with the current scenario.

In addition, mandatory minimum punishment has been introduced in 23 offences including buying child for the purpose of prostitution, organised crime, terrorist act, hurt to deter public servant from his duty, personating a public servant, theft etc.

To make the punishment proportionate to the crime, the BNS has also **introduced community service as a form of punishment** under section 4(f) of BNS for the first time for the six offences of:

(i) Public Servant unlawfully engaging in trade under section 202 of BNS

(ii) Non-appearance in response to a proclamation published under sub section (i) of section 84 of BNSS is punishable under section 209 of BNS

(iii) Attempt to commit suicide to compel or restrain exercise of lawful power of public servant under section 226 of BNS

(iv) Petty theft on return of theft money and a person is convicted for the first time under section 303(2) of BNS

(v) Misconduct in public by a drunken person under section 355 of BNS

(vi) Defamation under section 356 of BNS. However, the term 'community service' remains open to judicial interpretation and enforcement as it has not been defined in the Act.

Furthermore, a Standing Committee Report recommended that the term ‘community service’ be defined appropriately and the scope of this punishment should be clarified. However, this suggestion has been neglected in the actual text of the Act. This vagueness has the peril of increased judicial subjectivity in interpreting and enforcing this penal mode.

Other Notable Changes under Bharatiya Nyaya Sanhita

- Offence of Gang Rape: The erstwhile Section 376DA of the IPC which dealt with gang rape has been given an expanded meaning and has been incorporated in Section 70(2) of the BNS, wherein the phrase “under the age of sixteen” have been replaced by the phrase “under the age of eighteen”. This modification enables an expanded scope of the offence by bringing more cases under its purview.
- Forgery: Section 337 of the BNS which deals with the offence of forgery (erstwhile Section 446 of the IPC) now also includes Government issued documents like Aadhar Card and Voter Identity Card. This change also expands the scope of the offence.
- Attempt to commit suicide to compel or restrain exercise of lawful power: Section 226 of the BNS includes an offence of attempting suicide to compel or restrain any public servant from discharging his official duty. Earlier, Section 309 in the IPC which made attempt to commit suicide an offence was rendered redundant due to Section 115 of the Mental Healthcare Act, 2017, where a person attempting suicide was presumed to have done so under extreme stress and was thus exempt from prosecution under Section 309 of the IPC. The new Section 226 partially revives that by inserting an additional burden of obstruction in exercise of lawful power.
- Replacement of Words: Some relevant replacements have been tabulated below: Edit Old PhraseNew Phrase Night after sunset and before sunrise Firemischief by fire or any explosive substance Wifespouse Court of JusticeCourt Insane Personperson of unsound mind Militaryarmy * The usage of word ‘Goa’ has been replaced with the phrase ‘country X’ in illustration of Abetment in India of offences outside India.* The term ‘unsound mind’ has been replaced with the phrase ‘mental illness’ as the definition of mental illness is considered wider compared to unsound mind, as it includes conditions such as mood swings or voluntary intoxication.
- Under Sec 2 (21) of BNS, the term ‘movable property’ has been expanded to include property of every description which means tangible as well as intangible property.

- In offences relating to mischief by injury, inundation, fire or explosive substance, etc., words 'light house or other light used as sea marks or any sea mark or buoy' have been replaced by 'any sign or signal used for navigation of rail, aircraft, or ship' thereby expanding the scope of the same.
- The scope of the offence of theft has also been expanded to cover theft of intangible items, such as intellectual property. Further, erstwhile Section 380 of IPC relating to 'theft in dwelling house etc.' has been expanded in Section 305 of BNS to include theft of idol or icon, government property, theft of vehicle and theft of any article/goods from the vehicle.
- The BNS has raised the age of sexual consent for married women provided from 15 to 18 years, in conformity with the judgement of the Supreme Court in Independent Thought v. Union of India in 2017 wherein it had read down the section 375 of IPC as far as the age of sexual consent for married women is concerned.
- Sections 169 to 177 in Chapter IX of the Bharatiya Nyaya Sanhita (BNS), which address election-related offences, have been retained despite objections that the Representation of the People Act, 1951 (RP Act) already covers such offences in detail and could be updated to include these provisions. The likely reason for their inclusion in the BNS is that the RP Act applies specifically to Parliamentary and State Legislative Assembly elections, while the offences under Chapter IX of the BNS extend to all elections, including those for Municipalities and Panchayats.

The offence of adultery as stipulated under erstwhile **Section 497 of the IPC** has been deleted from the BNS, in pursuance of the decision of the Supreme Court in ***Joseph Shine v. Union of India***. In addition, **Section 377 of the IPC** has been completely deleted from the BNS. In the landmark judgement of ***Navtej Singh Johar v. Union of India***, the SC partially struck down the provision of Section 377 which made consensual sexual intercourse between same-sex individuals an offence.

However, the Court did not strike down the parts of this provision dealing with bestiality, sodomy, etc, owing to them being separate offences withing the same provision. However, the BNS has entirely removed the provisions, creating potential gaps in dealing with those offences which were not expressly declared unconstitutional by the Court.

The BNS has also abolished the colonial-era *sedition law* (Section 124A of the IPC) but retains its essence in Section 152, criticized for its vague and non-defined terms like *subversive activities*

and *endangers sovereignty*. While the 2023 Law Commission recommended keeping sedition with amendments, the lack of clear definitions may lead to misuse, risking individual liberties until clarified through judicial rulings.

The repeals and savings clause in the Bharatiya Nyaya Sanhita (BNS), which repeals the Indian Penal Code (IPC), includes provisions to protect the previous operation of the IPC and actions taken under it. By making Section 6 of the General Clauses Act, 1897 applicable, it ensures that penalties, punishments, investigations, or remedies initiated under the IPC remain valid.

However, the BNS further states that any action taken under the IPC will be deemed to have been taken under the corresponding provisions of the BNS. This raises concerns about the retrospective application of the new penal code, potentially violating Article 20 of the Constitution, which prohibits convicting a person for an offence not punishable by law at the time of its commission.

This provision could lead to legal challenges, as it might blur the distinction between the repealed IPC and the newly enacted BNS, creating ambiguity about the applicable law and its temporal jurisdiction.

Conclusion

This article was the second in the series of articles covering the changes made in the new criminal laws. This article covered the changes in the punishments, modifications in scope of the offences, deletion of offences, replacement of key words and potential concerns with the applicability of BNS. The next couple articles would cover the changes in the BNSS and the BSA

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