BLOGS

Understanding Bharatiya Nyaya Sanhita, 2023: Part I

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Introduction

The Bharatiya Nyaya Sanhita, also referred to as BNS, was made applicable from the 1st July of 2024 repealing the longstanding Indian Penal Code of 1860. It was laden with many changes including the introduction of new offences, newer forms of punishments, deletion of certain offences, expansion of terms *et al.*

Bharatiya Nyaya Sanhita (BNS) has also been made less bulky than its predecessor. In contrast to 511 sections in IPC 1860, the BNS 2023 only contains 358 sections in toto. This cutting down of provisions has been achieved by synthesizing similar offences in a single or fewer section(s).

For example, Section 317 of the BNS consolidates all the provisions relating to stolen property under Sections 410 to 414 of the IPC. Similarly, the three inchoate offences of ‘attempt’ (Section 511 of the IPC), ‘abetment’ (Sections 109-120 of the IPC) and ‘conspiracy’ (Sections 120-A and 120-B of the IPC) have been brought under the Chapter IV of the BNS.

Another change is the uniformizing of terms have also been done by replacing phrases like ‘minor’ and ‘child under the age of eighteen years’ with the uniform expression ‘child’ and ‘person with unsound mind’ has replaced words like ‘lunatic’, ‘idiot’ and ‘insane’.

This is the first article in the series of articles which would deal with such changes not only in the BNS but also in BNSS and BSA. This article will specifically deal with the new offences introduced in the new penal law (or Bharatiya Nyaya Sanhita).

New Offences Added to BNS (Bharatiya Nyaya Sanhita)

Let’s look at the notable addition of offences in the new BNS:

- Offence of Snatching

The offence of snatching has been introduced under Section 304 of the BNS. The provision stipulates that a theft would be qualified as snatching if the offender suddenly or quickly or forcibly seizes or secures or grabs or takes away any moveable property from any person (victim).

- Commission of Offences Through Electronic Means

The commission of cyber-crimes have exponentially increased in the country, as per certain reports. To tackle this and modernize the law, Section 2(39) has been introduced which provides that "*all words or expressions with regards to technology and digital media in general, shall have the same meanings as those given in the Information Technology Act, 2002, as well as the Bhartiya Nagarik Suraksha Sanhita, 2023*".

This expansion would enable a much wider scope in terms of recognizing various acts that fall under the ambit of an offence, thereby contributing to the detection and deterrence of crime. Section 2(8) of the BNS also states that documents now include electronic and digital records.

- Mob Lynching as an offence

Earlier, there was no specific recognition of mob lynching as a separate offence. There is no specific data on this offence as the NCRB earlier did not account for this. However, through an amendment adding to the provision of murder under Section 103 of the BNS, any murder committed by a group of five or more people, specifically based on conditions like religion, caste or community, place of birth, personal belief, etc., is now specifically punishable with death or life imprisonment with a fine, just like how a murder is punished.

This is a breakthrough addition to the BNS in light of the incidents of lynching that have been surfacing over the years and is expected to act as a potent deterrent against any such incidents in the future. Similarly, grievous hurt caused by a mob of five or more people has also been punished separately under the provision of Section 117(4) of the BNS, solidifying the resolve against mob justice.

- Sexual intercourse by employing deceitful means

Section 69 has been incorporated to introduce another offence that was not earlier present in the IPC. This provision provided that practicing deceit in order to effect sexual intercourse not amounting to rape would be a punishable offence. Here, *deceitful means* are inclusive of false promises and inducements.

- Organized Crime

A new definition of *organized crime* has been defined under Section 111 of the BNS, which includes certain recognised offences such as kidnapping, land grabbing, etc., among others, committed as a part of a syndicate, or on behalf of one.

Petty organised crime is also an offence now. It provides that whoever, being a member of a group or gang, either singly or jointly, commits any act of theft, snatching, cheating, unauthorised selling of tickets, unauthorised betting or gambling, selling of public examination question papers or any other similar criminal act, is said to commit petty organised crime.

- Hiring, employing or engaging a child to commit a crime

A new category of offence has been introduced to punish individuals engaged in hiring, employing or engaging a child to a commit a crime in BNS. Previously, under the IPC, there was no such provision to prosecute a person engaged in such acts.

Hence, to tackle this menace, a new section 95 of BNS has been introduced to make hiring, employing, engaging or using a child for committing offences including sexual exploitation or pornography offence as if such person himself has committed the offence.

- Negligence of a doctor causing death

A new offence has been introduced under the BNS which specifically punishes death caused by negligence of a “registered medical practitioner” while performing a medical procedure. This stipulation is covered under Section 106 of the BNS and provides for a punishment up to five years of imprisonment and fine.

The erstwhile section 304A of IPC generally dealing with negligence did not specifically mention these terms. This addition is an attempt to tackle mishandling of medical cases and provides for institutional and professional accountability.

- Printing or publishing trial court proceeding relating to sexual offences without permission of court

Section 73 of the BNS stipulates that printing or publishing any material related to court proceedings involving offences such as rape, sexual intercourse by a husband with his wife during separation, sexual intercourse by a person in authority, sexual intercourse obtained through deceitful means, or gang rape, is prohibited without prior permission from the court. Violators may face imprisonment for up to two years and a fine.

- Other additions

Terrorism has been made a separate offence and defined as an act that intends to threaten the unity, integrity, and security of the country, intimidate the general public or disturb public order. Section 113 of the BNS covers *terrorist acts*, which are a new addition to the purview. Mostly inspired by the provisions of the Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as the "UAPA"), Section 113 introduces fines, the limits of which are specifically mentioned, across various sub-sections, which are absent under the scheme of the UAPA.

In addition, abetment of commission of an offence in India from a foreign territory has also been made a new offence in BNS. Another category is murder by a life convict has been re-introduced as an offence in BNS. The Supreme Court had struck down the erstwhile section 303 of IPC pertaining to punishment for murder by life-convict on the ground that it provided for only single punishment of death and the court had no discretion. Now, two alternate punishments of death or imprisonment for life have been provided to remove the said infirmity under Section 104 of BNS.

- Introduction of Gender-Inclusive Language

The BNS expanded the term "gender" defined under section 2(10) and included the term *transgender,* which was earlier absent in the IPC. In a general scheme, multiple provisions have been made gender neutral.

For example, the offence of *voyeurism* under Section 77 of the BNS. However, it is pertinent to note that Section 77, along with other provisions, have incorporated the gender neutrality of the perpetrator, and not the victim.

In a similar scheme, even though a woman may now be convicted for the offence of voyeurism, a man will never be able to complain about voyeuristic behaviour, an area which BNS leaves in gray. Similarly, offences like rape still remain gendered, wherein only a woman can be a victim.

This is exclusionary as it overlooks transgender persons (or non-binary persons) from availing themselves of protection under various sexual offences, which may render their technical inclusion under Section 2(10) superficial.

However, it also cannot be claimed that gender neutrality in the context of victims has been overlooked in totality. There have been changes made to account for gender neutrality of victims as well. For example, as both boys and girls are procured for sexual exploitation, the word "minor girl" in section 366A of IPC has been replaced with the word "child" in Sections 93 to 99 of BNS

to cover both male and female children below the age of 18 years and the offence of procurement has been made punishable.

The offence relating to importation of a person from foreign country has also been made gender neutral to cover both boys and girls in Section 141 of the BNS as compared to the word ‘importation of girl from foreign country’ as used in Section 366B of IPC.

Conclusion

The BNS has sought to expand its ambit and been streamlined to include more contemporary offences. However, certain gaps remain as highlighted above. This post covered the types of new offences added in the BNS and a few changes to the language of the Act. The next post would account for the changes in definitions, punitive measures and the deletions of offences.