

A Brief Study on Changes Introduced by Bhartiya Nyaya Sanhita

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ABSTRACT

The criminal laws prevalent in India were a gift of the British and were made to exercise control over Indians. These laws were a decade old and despite of many amendments being made to the laws, they were yet not fit in the present circumstances so it became necessary to pass new criminal laws which would change the entire backdrop of the criminal laws in India . As a result three new criminal laws were passed and signed by President on 25Dec , 2023 and came into force on 1July , 2024 . The Bhartiya Nyaya Sanhita 2023 redefines the penal code, distinguishing between major and minor offenses and imposing stricter penalties for serious crimes such as terrorism. The Bhartiya Nagarik Suraksha Sanhita 2023 focuses on humanizing the criminal justice system by setting investigation timelines and emphasizing the importance of forensic examinations in serious cases. Meanwhile, the Bhartiya Sakshya Adhiniyam 2023 recognizes the significance of electronic evidence and introduces provisions for DNA evidence and expert opinions.

Keywords: Bhartiya Nyaya Sanhita , Bhartiya Suraksha Sanhita , Bhartiya Sakshya Adhiniyam , criminal laws , amendments .

Introduction

On December 21, 2023, the Indian Parliament passed three significant laws: the Bhartiya Nyaya Sanhita 2023, Bhartiya Nagarik Suraksha Sanhita 2023 and Bhartiya Sakshya Adhiniyam , replacing outdated colonial-era laws. These legislative changes aim to modernize and improve India's justice system, addressing contemporary challenges and ensuring fairness and effectiveness in legal proceedings.

These laws also establish an independent director of prosecution in each district, aiming to enhance fairness and impartiality at the local level. The legislative changes reflect a commitment to adapting India's legal framework to modern needs and aspirations, promoting justice that is inclusive and reflective of societal values. The reforms were informed by public input, with extensive consultations held by the Home Minister. Overall, the laws seek to address systemic issues such as case backlog, low conviction rates, and the need for technological integration, while ensuring a balance between citizen rights and security concerns.

This significant advancement aims to strengthen the prosecution system, ensuring fairness and impartiality at the local level. If similar progressive legal measures are taken within a specific timeframe

it could significantly enhance the overall criminal justice system and foster public trust in its evolution. The modernization of criminal laws signifies more than just a legal makeover; it underscores a commitment to delivering justice that aligns with the changing needs of society. This legislative initiative positions India on a trajectory toward a more equitable, accessible, and evolved legal framework.

India's criminal justice system has long been shaped by laws inherited from the British colonial era. Over the past seven decades of democracy, these laws have undergone alterations to adapt to modern needs. Recognizing the need for comprehensive reform, especially regarding outdated laws such as the Indian Penal Code, Criminal Procedure Code, and Indian Evidence Act, the Prime Minister advocated for a revamp in 2019. In line with constitutional principles, these laws have now been replaced by newer versions.

The present legal system faces complex challenges such as a backlog of cases, low conviction rates, and inadequate fines. Additionally, prisons are overcrowded with undertrial prisoners, and there's a lack of modern technology and forensic evidence utilization, leading to delays in justice. The new laws aim to equip the judicial system for potential technological advancements over the next century while maintaining a balance between citizen rights and security concerns. They introduce provisions to increase punishment rates, prevent cybercrimes, and incorporate community service as a legal form of punishment for the first time.

In the *Bhartiya Nyaya Sanhita*, emphasis is placed on crimes against humans, such as rape, murder, and trafficking. Notably, the government has removed the section on sedition and replaced it with treason, emphasizing the priority of national security. Extensive public consultation and deliberation, including 3,200 suggestions and 158 meetings led by the Home Minister, informed the crafting of these laws. The bills were sent to the Standing Committee of Parliament on Home Affairs on August 11, 2023. Overall, these legislative changes aim to modernize the legal framework and revamp the criminal justice system.

The *Bhartiya Nagarik Suraksha Sanhita 2023* aims to humanize our criminal justice system by introducing measures to enhance accessibility and responsiveness. It establishes timelines for investigations, replacing outdated terminology with more people-friendly language, showcasing a commitment to a compassionate approach. In cases involving serious offenses, the law highlights the importance of forensic team visits, ensuring onsite examinations to gather vital evidence. This provision aims to strengthen investigative procedures, promoting thoroughness and accuracy, and ultimately improving the legal framework in line with modern standards of justice.

The *Bhartiya Sakshya Adhiniyam 2023* acknowledges the increasing importance of technology in legal processes. In today's legal landscape, where technology plays a central role, this law defines electronic evidence broadly as any data generated or transmitted by devices capable of storage or retrieval. This comprehensive definition encompasses various digital forms such as emails, texts, and multimedia files, recognizing the diverse evidence types relevant to contemporary cases and emphasizing authenticity and integrity. This recognition is vital for upholding the credibility of electronic evidence in court, ensuring that technological advancements do not undermine legal proceedings' reliability. Additionally, special provisions for DNA evidence admissibility and expert opinions further strengthen the act's commitment to a modern and efficient legal framework.

Changes introduced by Bhartiya Nyaya Sanhita –

1) Sexual intercourse on false pretext of marriage

Bhartiya Nyaya Sanhita mentions a new offence of sexual intercourse by implying any deceitful means etc. under Section 69 which means that whoever by any deceitful means or by giving a fake promise of marriage establishes sexual relations with a women without any intention of fulfilling the promise. Although if the promise at the time of making the promise genuinely was willing to marry but due to change in circumstances is unable to fulfill the same then the punishment would not follow.

The quantum of imprisonment awarded under this section is simple imprisonment of any description for a term which can extend upto ten years and will also be subject to fine. The explanation to this provision states that deceitful means shall include inducement for or false promise of employment or promotion or marrying by hiding real identity.

Although this provision was not expressly mentioned in Indian Penal Code , 1860 but offenders were nonetheless convicted for this offence by linking Section 90 of Indian Penal Code which talks about when consent is known to be given under fraud or misconception of facts.

2) Snatching

Snatching has been defined in Section 304 Bhartiya Nyaya Sanhita and is mentioned in the Chapter XVII of offences against property .Snatching is a new offence that has been added to Bhartiya Nyaya Sanhita , 2023. Although it has not been assigned a definition but it is only a continuation of the already present offence of theft. Just like the offence of robbery in which it is mentioned when theft or extortion becomes robbery same is the case with the offence of snatching.

Theft becomes snatching when the following essentials are added in the offence of theft-

1. Suddenly or Quickly or forcibly
2. Seizes or secures or grabs
3. Movable property
4. In his possession

From above essentials snatching can be understood as the dishonest and deliberate act of forcibly acquiring the possession of any moveable property without that person's consent. Earlier since there was no offence of snatching the offences of snatching were covered either under the offence of robbery or theft based on police officer's understanding but after it's addition it will become relatively easier to convict people for it.

4) Engaging minor for offence

In the list of new offences an addition has been made by Section 95 Bhartiya Nyaya Sanhita , 2023 which is hiring, employing or engaging a child to commit an offence. The definition of child has been given under Section 2(3) Bhartiya Nyaya Sanhita which has been added in conformity with Section 3 of Indian Majority Act, 1875 which means any person who is below 18 years of age is a minor.

Section 95 of Bhartiya Nyaya Sanhita , 2023 has two parts first of which talks about inchoate offence in which merely hiring , employing or engaging any child is punishable. The first part of offence has been given both a minimum and maximum imprisonment in this offence in which minimum punishment is three years and maximum punishment is ten years.

The second part of the offence says that if in continuation of hiring ,employing or engaging an offence has been committed then the person will be granted same punishment as the offence which is committed. The explanation to this section further clarifies that hiring, employing or engaging a child for sexual exploitation or pornography is also covered by this section.

Recently in the case of S, Harish Vs Union of India , 2024 the Madras High Court upheld that watching child pornography in private is not an offence under Sec 292 Indian Penal Code which was subjected to great criticism and also the Supreme Court asked the High Court to give clarification as to why such statements were made by High Court.

In the wake of this time such a provision will help curb the cases of child pornography and will help save child trafficking.

5) Organised Crime

Out of all the offences that have been added in the Bhartiya Nyaya Sanhita the most needed offence is that of Organized crime. Organized Crime refers to those set of offences that are committed by a group of people by a well designed and conceit plan and brought to action. There are many organizations today which commit these organized crimes.

Organized crimes are embodied in Section 111 Bhartiya Nyaya Sanhita , 2023.It is one of those offences that have been made punishable at the preparation stage itself. The whole of the act need not be completed in order to punish the accused. Mere preparation is enough for attracting punishment.

It is an inclusive definition which tells what all is included in the definition of organized crimes. It is defined as a continuing unlawful activity including kidnapping, robbery , vehicle theft , trafficking of drugs , weapons or trafficking for prostitution by a single person or a group of people acting singly jointly and the other part of the definition makes it similar to the offence of rioting which talks about usage of violence or intimidation for that purpose.

The clause 2(a) of Section 111 gives the punishment of organized crimes as death or life imprisonment if offence results in death of a person. Thereafter clause 2(b) of Section 111 awards minimum punishment of five years and maximum punishment which can be upto the limit of life imprisonment

The third clause of the Section talks about abetting , attempting or conspiring or knowingly facilitating an organized crime. This clause also awards a minimum punishment of five years and a maximum punishment of life imprisonment and also a fine can be imposed which cannot be lesser than five lakh rupees.

The clause 4 of the section punishes a person for simply being a member of organized crime and the punishment awarded for it can extend ranging from imprisonment of five years to life imprisonment and also to a fine whose minimum limit is fixed at five lakh.

The clause 5 of the Section talks about people who harbor the offender of organized crime ought be punished with imprisonment of three which can go upto life imprisonment and also a fine which cannot be less than five lakhs.

The proviso to clause 5 clarifies that the provision of this clause do not extend where harboring or concealment is given by the spouse of the offender.

The clause 6 extends to the people holding the property got or received by an organized crime. He will be punished with minimum imprisonment of three years and which can extend upto life imprisonment and will also be liable to fine which cannot be less than two lakhs.

6) Petty Organised Crime

Petty organized crime is mentioned in Section 112 Bhartiya Nyaya Sanhita, 2023.It seeks to define petty organized crime as any crime that causes feelings of insecurity among citizens relating to theft of vehicle or theft from vehicle , domestic and business theft , trick theft , cargo crime , theft(attempt to theft, theft of personal property), etc and punishment thereof.

Petty Organized Crime is defined as an offence committed by any member of group or gang commits an act of theft, snatching, cheating or unauthorized selling of tickets or unauthorized selling of tickets, unauthorized betting or gambling or selling of public examination question papers or any other similar criminal act.

An explanation to Section 112 Bhartiya Nyaya Sanhita, 2023 explains that offence of theft includes trick theft, theft from vehicle, dwelling house or business premises, cargo theft, pick pocketing, theft through card skimming, shoplifting and theft of Automated Teller Machine.

Section 112(2) of Bhartiya Nyaya Sanhita, 2023 states the punishment for the offence of Petty Organized Crime. The minimum imprisonment awardable under this section is one year and maximum imprisonment awardable is seven years and will also be given fine.

7) Terrorist Act

A new provision Terrorist Act has been envisaged under Section 113 Bhartiya Sakshya Adhinyam, 2023. It can be defined as an act which is done with the intention of threatening or which is capable of threatening the unity, integrity, sovereignty, security or economic security of India or with the intention of causing terror or which is capable of threatening terror and causing terror to arise into the minds of the people or any section of the society of people in India or in any foreign country -

- a) This can be done by using bombs, dynamite or explosive substance or inflammable substance or firearms or other lethal weapons or poisonous or noxious gases or other chemicals or by any other substance of a hazardous nature or by any other means of whatever nature to cause or likely to cause-
- Death of or injury to one and all persons or
 - Loss of or damage to or destruction of property or
 - Disruption of any supplies or services essential to the life of the community in India or in any foreign country or
 - Damage to the monetary stability of India by way of production or smuggling or circulation of counterfeit Indian paper currency coin or of any other material or
 - Damage or destruction of any property in India or in a foreign country used or intended to be used for the defense of India or in connection with any other purposes of the Government of India, any State Government or any of their agencies, or
- b) Overawes by means of criminal force or the show of criminal force or attempts to do so or causes death of any public functionary or attempts to cause death of any public functionary or
- c) Detains, kidnaps or abducts people and threatening to kill or injure such people or does any act in order to compel the Government of India, any State Government or the Government of a foreign country or an international or inter-governmental organization or any other person to do or abstain from doing any act commit a terrorist act.

Section 113(2) of Bhartiya Nyaya Sanhita, 2023 states the punishment of Terrorist Act which has resulted in death of the person which will be death or life imprisonment and also with fine and in the case of any other offence the person be punished with minimum imprisonment of five years and maximum imprisonment of life imprisonment and also with fine.

Section 113(3) of Bhartiya Nyaya Sanhita, 2023 awards punishment to the person who abets, conspires, attempts to commit, advocates, advices or knowingly or unknowingly facilitates the commission of terrorist act or any act preparatory to the commission of terrorist act and the minimum imprisonment awardable is five years and maximum imprisonment of life and with fine also.

Section 113(4) punishes the person who organizes or causes to be organized any camp or camps for imparting training or recruited or caused to be recruited people for commission of terrorist act will be punishable with five years but it can extend to life imprisonment and also with fine.

Section 113(5) awards punishment to people who are member of organization which is involved in terrorist act is punishable with life imprisonment and fine.

Section 113(6) punishes any person who conceals or harbors or attempts to conceal or harbor people who commit terrorist act or are involved in terrorist act punishable with minimum imprisonment of three years and it can extend upto life imprisonment with fine.

Section 113(7) punishes a person who possesses any thing or goods acquired through commission of terrorist act and it's punishment can be upto life imprisonment with fine.

8) Voluntarily causing grievous hurt

A new provision has been added under Bhartiya Nyaya Sanhita , 2023 which is Section 117(3) which is added to provide strict punishment for grievous punishment which results in persistent vegetative state or in permanent disability will attract higher punishment.

Section 117(3) awards punishment to person who voluntarily causes grievous hurt and in the commission of it causes any hurt which causes hurt to a person which causes the person to enter into permanent disability or causes any person to result in persistent vegetative state.

The minimum punishment awardable is rigorous imprisonment of ten years and maximum imprisonment awardable is life imprisonment and under this section life imprisonment means imprisonment for the remainder of that person's natural life.

Thus this means that imprisonment for life awardable under this section is not subject to commutation and no authority or President or Vice President is allowed to alter , rescind or commute it.

9) Importation of girl or boy from foreign country

The offence relating to trafficking of person from foreign country has been made gender neutral to cover both boy or girl which was earlier applicable to only girl. It has been envisaged under Section 141 of Bhartiya Nyaya Sanhita , 2023. It seeks to protect minor children from being used for the purpose of forced or seduced illicit intercourse.

This section punishes the person who imports any boy below the age of eighteen years or a girl below the age of twenty one years with the intention that girl or boy or knowing it to be likely that the boy or girl will be forced or seduced for the purpose of illicit intercourse with another person and the punishment can be upto ten years and fine.

10) Rajdroh

Indian Penal Code , 1860 contained a provision known as Sedition in Section 124A which made punishable any act which excited disaffection against government established by law. Although the provision was being misused by people as any derogatory statement made against the government was brought within the ambit of this section. So the government had stayed filing of FIR under this section under the case of S.G. Vombatkere Vs Union of India , 2022 and had later on stayed trials of this Section till the new criminal law is passed.

In the Bhartiya Nyaya Sanhita , 2023 the provision relating to Sedition has been deleted and instead in it's place the offence of Rajdroh has been added. Rajdroh has been placed under Section 152 Bhartiya Nyaya Sanhita , 2023 which seeks to prohibit and punish acts endangering sovereignty or unity or integrity of the nation.

This provision makes punishable the act of exciting or attempting to excite, secession or armed rebellion or subversive feelings or encourages feelings of separatist activities or endangers the sovereignty or unity or integrity of India. The punishment prescribed for it is imprisonment upto seven years or life imprisonment and also fine.

An explanation has been added to this section which was present in earlier Sedition also which further explains that comments or statements made while criticizing the administration or other action of government in order to obtain the change by legal means without exciting or attempting to excite feelings of separatist activities or endangering sovereignty or unity or integrity is not an offence under this section.

Thus from the reading of this section the clear distinction is that earlier the offence was against the government whereas now the offence is against the country.

11) Attempt to commit suicide

Attempt to commit suicide has been deleted from Bhartiya Nyaya Sanhita, 2023 to bring it in conformity with Mental Healthcare Act, 2017. It had been declared by the Supreme Court to not lodge F.I.R. under this section.

The object of this section is to secure that public servants can freely exercise their powers which are lawfully empowered to them. These powers can be exercised without worrying about the fact that people are intimidating them.

Other object of it is to bring a sense of fear into the minds of people that they will be punished if they restrain or attempt to compel or restrain any public servant from discharging his official or public duty. A new section has been added in Bhartiya Nyaya Sanhita, 2023 in its place which criminalizes attempting to commit suicide but only if it is done with the intent to compel or restraint exercise of lawful power.

It has been envisaged in Section 226 Bhartiya Nyaya Sanhita, 2023. It penalizes an attempt to commit suicide but only if it is done with the intention of compelling or restraining any public servant from discharging his public duty. It is awarded simple punishment which can extend upto one year or fine or both or community service.

12) Mischief

Although the offence of mischief was present in Indian Penal Code, 1860 but in the new criminal laws (Bhartiya Nyaya Sanhita, 2023) the scope of mischief has been widened. It has been envisaged under Section 324 Bhartiya Nyaya Sanhita, 2023. The scope of it has been widened under Sec 324(3), 324(4), 324(5) and 324(6).

As per this Section 324(3) Bhartiya Nyaya Sanhita, 2023 causing mischief and loss or damage to property now includes the property of government or local authority also and the punishment of either description can be upto one year or fine or both.

Section 324(4) Bhartiya Nyaya Sanhita, 2023 prescribes punishment in accordance to the loss or damage caused by mischief. Thus according to it when the loss or damage to the property is of twenty thousand rupees and it can extend upto one lakh rupees then the punishment can be of either description which can extend upto two years or fine or both.

Section 324(5) Bhartiya Nyaya Sanhita, 2023 states that whosoever causes mischief to any property and causes loss or damage upto one lac rupees or upwards and the punishment can be upto five years or fine or both.

Section 324(6) Bhartiya Nyaya Sanhita , 2023 is a provision which makes preparation of mischief punishable. In this provision whosoever commits mischief and has made preparation to commit death or hurt or wrongful restrain or causes fear of death or hurt or wrongful restrain can be punished with imprisonment which can be simple or rigorous and it can extend upto five years and fine.

13) Mob Lynching

In Section 103 the punishment for murder has been given which is death or life imprisonment and fine which is same as that in Indian Penal Code but the sub section 2 is added which was not present earlier which talks about mob lynching. Mob lynching is a term used to describe the acts of targeted violence by a larger group of people. Mob lynching is an offence against body and property both but in the Bhartiya Nyaya Sanhita it has been placed under the chapter of offences against body so as per Bhartiya Nyaya Sanhita mob lynching against property is not an offence.

Sec 103(2) deals with mob lynching. It has been defined as a concert act committed by a group of five or more people on the ground of race , caste ,community , sex , place of birth , language , personal belief or any other ground commits murder then each member of the group shall be punishable. The punishment awardable is either death or life imprisonment and fine along with it.

Where the five or more people on the same ground mentioned above causes grievous hurt the punishment mentioned is seven years and fine.

14) Minor changes introduced by Bhartiya Nyaya Sanhita, 2023

1. Under section 106(1) the punishment for causing death by rash or negligent act has been enhanced from two years to five years. Although the punishment for medical professionals is two years.
2. The scope of theft has been widened under Section 305 to include theft of vehicle , theft of government property , theft from vehicle and theft from place of worship of idol or icon and the punishment allotted to it is upto seven years and fine.
3. All the definitions have been organized and provided under Section 2. The definition of transgender has been added which is same as provided in clause (k) of section 2 of Transgender Persons (Protection of Rights) Act , 2019 (40 of 2019).
4. The definition of movable property now includes both tangible and intangible property. Electronic and digital records are also included in the definition of document.
5. Section 197 which deals with imputations, assertions prejudicial to national integration which corresponds to Section 153B of Indian Penal Code , 1860 its clause (d) which makes punishable the act of making or publishing false or misleading information which has tendency to jeopardize sovereignty, integrity and unity or security of India and the punishment for it is three years or fine or both.
6. Beggary has been introduced as a form of exploitation for trafficking and has been made punishable under Section 143 Bhartiya Nyaya Sanhita , 2023.
7. In section 116 of Bhartiya Nyaya Sanhita , 2023 which is grievous hurt the number of days for which the sufferer is in severe bodily pain or unable to follow his ordinary pursuits has been reduced to fifteen days from twenty days. This amend has been made in conformity with medical advances which provide quicker remedy.
8. At many places the colonial expressions, have been removed like ‘Queen’ , ‘British India’ and ‘ Justice of the peace’ etc .
9. Uniformity has been brought by using the word ‘child’ throughout Bhartiya Nyaya Sanhita , 2023 which is achieved by replacing the word ‘minor’ and ‘child under the age of eighteen years’ with the

word 'child'.

10. Fines under Indian Penal Code, 1860 were very low extending from ten rupees to thousand rupees. It also needed reformation which is given by Bhartiya Nyaya Sanhita. The term of imprisonment has been increased for thirty three offences and fines have been enhanced in eighty three offences alongwith it the mandatory minimum punishment has been introduced for twenty three offences.