



Beyond the Indian Penal Code: The BNS's Innovations

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Abstract

The nature of Crime and criminal law is endlessly change. With the passage of development new methods and new forms of crime are come on record. The continuous change and progress in science and technology leads towards new and emerging crime and criminal activities. The nature of commission of crime is rapidly change and criminal are using the new technique for its commission. The old laws are not able to address these issue and criminal behavior of criminal. The *Bharatiya Nyaya Sanhita* (hereinafter BNS) has introduced in 2023 with several new provisions pertaining to new emerging crimes and address contemporary challenges in India. The BNS provides comprehensive chapters and sections on new and emerging crimes. The insertion of various provisions leads clarity of thought in the mind of law protector agencies. This paper examines the relevance of these additions, including provisions for cybercrimes, terrorism, organized crime, offence against child and women, and mob lynching. By criminalizing these offenses, the BNS aims to protect citizens, maintain law and order and promote a just and equitable society. The paper concludes that the provision of new crimes are essential to ensuring India's continued progress and development.

Keywords: New offences, terrorism, organized crime, new definitions,

I. Introduction

The criminal laws are generally made to control delinquent behavior in the society. The laws were drafted considering the contemporary situation in the society. The criminal laws are confine to address the contemporary challenges and offences committed by the criminals. As the society continuously change as per the development in every sector. The social orders also change to address the new challenges. The expectation is to change the criminal laws as per the societal requirement but in

fact the criminal laws are not rapidly and easily change. It requires more focus and concern of the society. If any major incident happened in the society then only the criminal law change accordingly to address the challenges. In India we follow and implemented more than 150 years old criminal law i.e. Indian Penal Code, 1860 (hereinafter IPC). The drafting of IPC was based on then social norms and social order. After the century the Indian Government try to change the old contemporary laws and introduced modern criminal code i.e. The *Bharatiya Nyaya Sanhita, 2023*.

The present code on criminal law address the issue of national security as primary concern of the government. Earlier in the IPC the offence against state was included but all provisions are inclined towards the protection of British government. Whereas in the new code the concern is given to the nation. The nation given priority and issues which threatened are address under the code. Secondly, the new code adopt the reformatory approach towards the criminals but it doesn't means that, the theory of deterrence is neglected. In various heinous and serious offences the death penalty is still consider as a form of deterrent punishment to the accused. As per the new scheme of BNS in various major offences² death sentence is prescribed which creates deterrence in the mind of criminals. Considering the reformatory approach under the BNS in the petty offence community service³ is provided as part of reformation of criminals. The community services punishment is provided only in less heinous crimes. The philosophy behind is to make reformation in the criminal and reduce the burden of jail. As Indian jails are facing various issues which leads towards the violation of human rights and constitutional rights of the accused. Considering these various issues in India the new criminal law provides comprehensive changes these are discussed as below

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² See section 103, 104, 111, 147, 160, 310 of BNS, 2023

³ Section 4 (f) of BNS, 2023



Why deletion and addition of new provision under BNS

As the old law of crime is outdated and fail to address the new and emerging offence committed by the offenders. Due to technological advancement the accused used new methods and technique for the commission of offence. The old law was drafted 150 years back whereas the new criminal law deals with the new provisions which is based on the technological advancement. Considering the new and emerging situation before the nation the new law is comprehensive code provides guard to all it citizen. As the society undergo rapid technological advancement and for the reason the new law is amend and consolidate⁴ to address the new and emerging issues. In society the social norms are change which consequently and pertinently change the entire structure of society. The new emerging issues are come on records like gender discrimination, terrorism, organized crime, theft of ATM card, gambling, paper leak etc. where old law did not provides adequate provision to address these emerging issues. Secondly the edifice of punishment under the IPC is outdated and old. The incipient and reformatory punishment in the form of community services is revolutionary in the administration of criminal justice system.

⁴ See the preamble of BNS, 2023

⁵ Section 2 (10) of BNS —the pronoun “he” and its derivatives are used of any person, whether male, female or transgender.

⁶ Section 76 of BNS 76. Whoever assaults or uses criminal force to any woman or abets such act with the intention of disrobing or compelling her to be naked, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to seven years, and shall also be liable to fine.

⁷ Section 77 of BNS 77. Whoever watches, or captures the image of a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator or disseminates such image shall be punished on first conviction with imprisonment of either description for a term which shall not be less than one year, but which may extend to three years, and shall also be liable to fine, and on second or subsequent conviction, with imprisonment of either description for a term which shall not be less than three years, but

Significant changes under BNS

To alleviate the new and emerging problem in the society the definition clause of the BNS is significantly change. The modification of definition of ‘gender’⁵ provides gender natural provision in offence against the human body. Earlier under the IPC the males are only responsible for certain offence like Assault⁶, Voyeurism⁷ but as per the BNS these offence are gender natural irrespective of gender any person held responsible for these offence. Secondly the scheme of offence against human body provides comprehensive protection to all the victims by enhancing the quantum of punishment. The significant increment in the quantum of punishment provides sense of security among the victims and creates fear in the mind of criminals. The offence of murder by group of people provides protection against the offence of mob lynching⁸. The inclusion of offence of organized crime⁹ by any person or group of person engaged in robbery, kidnapping, vehicle theft, intimidation, coercion etc. are punishable depending on the involvement of accused the persons are responsible from death to imprisonment. The definition of organized crime also seeks to introduce within it the concept of economic offences which includes the offence of criminal breach of trust, forgery, counterfeit of coin and currency etc. the most significant provision is added under the BNS i.e. offence of terrorism¹⁰ earlier this

which may extend to seven years, and shall also be liable to fine.

⁸ Section 103 (2) of BNS, 2023, When a group of five or more persons acting in concert commits murder on the ground of race, caste or community, sex, place of birth, language, personal belief or any other similar ground each member of such group shall be punished with death or with imprisonment for life, and shall also be liable to fine.

⁹ Section 111 (1) of BNS, 2023 111. Any continuing unlawful activity including kidnapping, robbery, vehicle theft, extortion, land grabbing, contract killing, economic offence, cyber-crimes, trafficking of persons, drugs, weapons or illicit goods or services, human trafficking for prostitution or ransom, by any person or a group of persons acting in concert, singly or jointly, either as a member of an organized crime syndicate or on behalf of such syndicate, by use of violence, threat of violence, intimidation, coercion, or by any other unlawful means to obtain direct or indirect material benefit including a financial benefit, shall constitute organised crime.

¹⁰ See section 113 of BNS, 2023



offence was covered by the UAPA¹¹ but this time the legislature included under the preview of offence against human body.

The removal of offence of sedition¹² from the BNS and insertion of new and elaborative provision under section 152¹³ of BNS provides protection against the act endangering sovereignty, unity and integrity of India. The scope and gravity of offence of sedition is expanded including within it the act of using electronic communications. The BNS provides for the provision for offence relating to coin, currency, notes, bank notes and government stamps. The notable change is the addition of “coin and government stamps” in addition to currency, notes and bank notes. Furthermore the act of counterfeiting government stamps and coins has been defined under section 178 explanation¹⁴ of BNS. In IPC the offence pertaining to economic crime was introduced but in the BNS the term “economic offence¹⁵” has been introduced for the first time as part of the offence of

organized crime which includes criminal breach of trust, forgery, counterfeiting coins, currency and valuable security. It also provides protection against the offence of money laundering and *hawala*¹⁶ transactions. The new provision of cheating is included with some modification set out the various degree of cheating based on the extent of injury/ harm suffered by the victim. In the offence of criminal breach of trust the quantum of punishment is substantially change.

The prominent change under the BNS is insertion of chapter XI laying out offence against public tranquility is the inclusion of “electronic communication¹⁷” significantly change the concept of this offence.

In the offence of “defamation¹⁸” has been consolidated and punishment of community service has been added. Other relevant modification is introduced in the offence of snatching which state that, “ theft is ‘snatching¹⁹’ if, to commit theft, the

¹¹ Unlawful Activities (Prevention) Act, 1967

¹² Section 124 A of IPC, 1860, Whoever by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, the Government established by law in India, shall be punished with imprisonment for life, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.

¹³ 152. Whoever, purposely or knowingly, by words, either spoken or written, or by signs, or by visible representation, or by electronic communication or by use of financial mean, or otherwise, excites or attempts to excite, secession or armed rebellion or subversive activities, or encourages feelings of separatist activities or endangers sovereignty or unity and integrity of India; or indulges in or commits any such act shall be punished with imprisonment for life or with imprisonment which may extend to seven years, and shall also be liable to fine. Explanation.— Comment expressing disapprobation of the measures, or administrative or other action of the Government with a view to obtain their alteration by lawful means without exciting or attempting to excite the activities referred to in this section do not constitute an offence under this section.

¹⁴ Explanation.—For the purposes of this Chapter,— (1) the expression “bank-note” means a promissory note or engagement for the payment of money to bearer on demand issued by any person carrying on the business of banking in any part of the world, or issued by or under the authority of any State or

Sovereign Power, and intended to be used as equivalent to, or as a substitute for money;

(2) “coin” shall have the same meaning as assigned to it in section 2 of the Coinage Act, 2011 and includes metal used for the time being as money and is stamped and issued by or under the authority of any State or Sovereign Power intended to be so used;

(3) a person commits the offence of “counterfeiting Government stamp” who counterfeits by causing a genuine stamp of one denomination to appear like a genuine stamp of a different denomination;

(4) a person commits the offence of counterfeiting coin who intending to practice deception, or knowing it to be likely that deception will thereby be practiced, causes a genuine coin to appear like a different coin; and

(5) the offence of “counterfeiting coin” includes diminishing the weight or alteration of the composition, or alteration of the appearance of the coin.

¹⁵ See section 111 Explanation III of BNS, 2023

¹⁶ Ibid

¹⁷ See section 196 and 197 of BNS, 2023

¹⁸ Section 356. (1) of BNS, 2023, Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes in any manner, any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person.

¹⁹ Section 304. (1) Theft is snatching if, in order to commit theft, the offender suddenly or quickly or forcibly seizes or secures or grabs or takes away from



offender suddenly or quickly or forcibly seizes or secure or grabs or takes away from any person or his possession any movable property” the scope of movable property has been increased under the BNS. Significantly, section 377²⁰ and section 497²¹ of IPC have been omitted from the BNS apparently because of recent judgment passed by the Supreme Court of India in relation thereto. BNS does not criminalized sexual intercourse against the animal any further.

In BNS the old offence like murder, rape, abetment of suicide, assault etc. are retained with some modification either in quantum of punishment of its nature. However, “marital rape” has not been defined under the BNS new section 69²² of BNS provides sexual intercourse by employing deceitful means, or by making a promise to marry a woman without any intention of fulfilling the same punishable under the BNS. This section introduced to curb the menaced of false promise of marriage. Considering the sexual offence in BNS various recommendations are not included as suggested by the *Verma Committee*²³. The offence of negligence is redefined and modified considering the negligent act of person. In IPC section 304 A²⁴ did not make it clear about the negligent act of specific person whereas under the BNS three category of negligence made punishable and quantum of punishment is also varies as per the nature of negligent act of person²⁵. The nature of attempt to commit suicide is change under the BNS earlier there is no specific provision is provided for

any person or from his possession any movable property.

²⁰ Section 377 of IPC, 1860 Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. This section struck down and declared constitutionally invalid by the case of *Navtej Singh Johar vs. Union of India*, 2018 INSC 790

²¹ Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery, and shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both. In such case the wife shall not be punishable as an abettor. This provision was struck down by the case of *Joseph Shine v. Union of India*, (2019) 3 SCC 39

²² Section 69 of BNS, 2023. Whoever, by deceitful means or by making promise to marry to a woman

reason for to commit suicide but under the BNS provision is made to protect the public officers against unnecessary compulsion to discharge their official duties.

Other changes under BNS

- Expanded Scope of Kidnapping (Section 135)
- Exploitation of Children for Offences (Section 95)
- Offence against human body, women and children given precedence
- All incomplete category of offence are brought together (Attempt, abetment, conspiracy)
- Community service is new kind of punishment prescribed
- Abetment outside the India made punishable (Section 48)
- Age based different punishment for gang rape has been removed the person is liable for imprisonment of life means reaming of natural life or death for gang rape of women below the age of 18 years (Section 70(2))
- New provision (Section 117 (3)) has been introduced and provides stringent punishment for grievous hurt which results in persistent vegetative state or permanent disability
- Importation of persons from foreign countries has been made gender neutral to cover both boys and girls

without any intention of fulfilling the same, has sexual intercourse with her, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.

Explanation.—“deceitful means” shall include inducement for, or false promise of employment or promotion, or marrying by suppressing identity.

²³ On 23rd December, 2012 three member Committee headed by Justice J.S. Verma, former Chief Justice of the Supreme Court, was constituted to recommend amendments to the Criminal Law so as to provide for quicker trial and enhanced punishment for criminals accused of committing sexual assault against women.

²⁴ Section 304 A of IPC, 1860, Causing death by negligence.--Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both

²⁵ See section 106 of BNS, 2023



- The scope of mischief has been expanded any harm to government or local authority made punishable (Section 324)
- Uniform definition of child is given under BNS
- Beggary is form of exploitation has been introduced
- Number of days provided for suffers in a savior bodily pain for the purpose of grievous hurt has been reduced from 20 days to 15 days
- The amount of fine in IPC was very low ranging from Rs10 to 1000 this is increase from Rs. 1000 to 10000

II. Conclusion

The new criminal law is blend of various provision which address the emerging issues in India. The new act is comprehensive and equipped with the new emerging advancement to tackle the challenges. The new provision instated under the BNS will definitely provide way forwards to curb the menaced of criminal activities. With the passage of time it will also improve and more modernized.