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A Critical Analysis of Bhartiya Nyaya Sanhita, 2023

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Abstract:

The Bhartiya Nyaya Sanhita, 2023 (BNS) marks a significant shift in the Indian criminal justice landscape, replacing the colonial-era Indian Penal Code, 1860 (IPC) with a framework intended to reflect contemporary Indian values, social realities, and constitutional mandates. This critical analysis evaluates the BNS with respect to its stated objectives, structural reforms, and practical implications. The legislation claims to decolonize Indian criminal law, streamline legal processes, and enhance the efficiency of justice delivery. Notably, the BNS introduces new offences such as terrorism and organized crime, while redefining or omitting certain archaic provisions of the IPC. It also places a stronger emphasis on victim-centric justice, evidenced by provisions promoting time-bound investigations and trials. However, this analysis also highlights several areas of concern. Critics argue that despite cosmetic changes in nomenclature and structure, many substantive provisions remain largely derivative of the IPC. Moreover, the BNS retains broad and vague definitions of offences such as sedition (renamed as “acts endangering the sovereignty of India”), raising concerns over potential misuse and threats to civil liberties. Additionally, the legislation's emphasis on stringent punishments and increased state powers may conflict with human rights principles and the reformative goals of criminal jurisprudence. Through a doctrinal and comparative approach, this paper assesses whether the BNS genuinely represents a transformative legal shift or merely a repackaged continuity of colonial legal thought. It also examines its compatibility with India's constitutional ethos, judicial precedents, and international obligations. While the BNS is a commendable attempt at reform, its true efficacy will depend on implementation, judicial interpretation, and continued scrutiny by civil society. This analysis concludes that while the Bhartiya Nyaya Sanhita, 2023 is a step forward, it requires substantial refinement to truly realize a modern, equitable, and decolonized criminal justice system in India.

Key Words: constitutional mandates, decolonized, criminal justice system, implementation, transformative.

I. INTRODUCTION

Lord Macaulay is the craftsman behind the Indian Penal Code, 1860 which, though a colonial law or pre-independence law, had served to be the mainstream criminal law for the country for more than 150 years. India saw a historic event on the 20th day of December in 2023 when the Indian Parliament gave approval to three new laws “the Bharatiya Nyaya Sanhita” (‘BNS’), the “Bharatiya Nagrik Suraksha Sanhita” (‘BNSS’), and the “Bharatiya Sakshya Adhinyam” (‘BSA’) to supersede the “Indian Penal Code, 1860” (‘IPC’), the “Criminal Procedure Code”, 1973 (‘CrPC’), and the “Indian Evidence Act, 1872” (‘IEA’), respectively. The implementation of the same has been scheduled to commence on July 1, 2024.

“The Bharatiya Nyaya Sanhita (BNS) was introduced on August 11, 2023 to replace the IPC. It was examined by the Standing Committee on Home Affairs.”¹ The “Bharatiya Nyaya (Second) Sanhita, 2023” (BNS2) was enacted on December 12, 2023 following the withdrawal of the previous Bill. It includes accurate suggestions from the Standing Committee. The BNS, 2023 aims to replace this particular law owing to its obsolete nature and its incompetency to deal with the changes that the society underwent since Independence and the advent of The Constitution of India.

This research intends to critically assess the Bharatiya Nyaya Sanhita (referred to as BNS) by examining its stated objectives and comparing it with the current Indian Penal Code, 1860. The Indian Penal Code of 1860 was formulated by Lord Macaulay, the inaugural chairman of the first Law Commission of India. It has endured for a considerable period of around 163 years. Society has seen significant transformations since 1860, mostly due to the country's attainment of independence and the emergence of modernization. Additionally, there have been notable shifts in the nature of criminal activity. The criminal law of the country has significantly advanced via the incorporation of several precedents, changes, and specialized legislation that supersedes the general law. The Indian Penal Code of 1860 consists of 511 sections organized into 23 chapters. The Bharatiya Nyaya Sanhita will consist of 358 sections, which is a reduction from the 511 parts found in the IPC. The measure has incorporated a total of 20 additional criminal offenses, with the duration of imprisonment being extended for 33 of them.

¹ Report No. 246, The Bharatiya Nyaya Sanhita, Standing Committee on Home Affairs, Rajya Sabha, November 10, 2023

The fee has been augmented in 83 offenses, while obligatory minimum penalties have been implemented in 23 offenses. Community service has been implemented as a punishment for six offenses, whereas 19 provisions of the bill have been revoked or eliminated.

II. CHANGES INTRODUCED BY BNS

The new BNS, 2023 has many challenges to face and has to travel a tough path to cater to the needs of the Indian Society as it repeals the traditional law of IPC, 1860 to which the society was accustomed to. The **major changes** that the Act had introduced are as follows:

- **A new category of punishment**

Community service has been implemented as a punitive measure according to Section 4(f), although the specific nature of community service has not been clearly specified.

Community service may be imposed as an additional penalty for offenses such as attempted suicide to exert control over lawful authority, defamation, public misconduct by an intoxicated individual, and failure to comply with a direction issued under section 8(4)² regarding appearance at a specified location and time.

- **Offences Against Women and Children**

The latest version of the BNS introduces Chapter V titled "Offences Against Women and Children: Sexual Offences," encompassing sections 63 to 99. The offenses pertaining to women and children have been consolidated into a single chapter at the beginning of the Code, when previously they were scattered throughout many chapters and sections.

- **Marital Rape with Minor Wife Is Offence**

According to Section 63 of BNS, except in cases of rape, "sexual intercourse" or sexual actions between a "man" and "his wife" who is not younger than eighteen would not be regarded as a victim of rape. According to the Indian Penal Code (IPC), the minimum age for a wife to not be considered a victim of rape was set at "fifteen years".

In 2017, the Supreme Court, in the case of *Independent Thought v. Union of India*³, interpreted Exception 2 to Section 375 IPC to mean that the age of consent for sexual intercourse with a minor wife should be raised from fifteen years to eighteen years. This was done in order to broaden the definition of rape to include sexual conduct with a minor wife.

² Section 8 Bharatiya Nyaya Sanhita 2023

³ AIR 2017 SC 4904

- **Engaging in “sexual intercourse” by the use of deceptive methods, etc.**

BNS criminalizes sexual intercourse through the use of deceptive methods, among other offenses. According to Section 69, anyone who has sexual intercourse with a woman by deceiving her or by falsely promising to marry her, without any intention of actually marrying her, may be subject to a fine in addition to a maximum ten-year jail sentence. Even if the deed does not fit the legal definition of rape, this punishment still stands.

- **Strengthened Penalties for Gang Rape of Victims Under 18 Years old**

Section 70⁴ states that each person involved in the rape of a woman under the age of eighteen who is committed by a group of people or by an individual acting with a common intention is guilty of rape. Life imprisonment, which entails incarceration for the remainder of one's natural life in addition to a fine or the potential for the death sentence, is the punishment for this offense. It is significant to note that victims under the age of sixteen are subject to a harsher sentence under Section 376DA IPC.

- **Printing or publishing court proceedings related to sexual offenses**

According to Section 73, printing or publishing any material about a court case involving offenses like ‘rape’, ‘sexual intercourse by a husband upon his wife during separation’, “sexual intercourse by a person in authority”, “sexual intercourse by using deceitful means”, or gang rape, without permission from the court, can result in a prison sentence of up to two years and a possible fine. Moreover, the explanation specifically clarifies that the act of printing or publishing the pronouncement of any High Court or the Apex Court is not considered a violation as defined in this provision.

- **Section 377 IPC and Navtej singh case**

It is important to draw the attention towards the historic ruling of Supreme Court in *Navtej Singh Johar*⁵, where by a majority of 5-0, the Supreme Court selectively struck down Section 377 IPC, “which criminalised consensual carnal intercourse, however forced intercourse with an adult male is an offence, and also bestiality”. It is important to note that the Apex had only struck down “consensual carnal intercourse” but the new BNS has abolished the offense,

⁴ Section 70 Bharatiya Nyaya Sanhita 2023

⁵ AIR 2018 SC 4321; W.P. (Crl.) No. 76 of 2018 D. No. 14961/2016

indicating that acts of non-consensual sexual intercourse against a man and engaging in sexual acts with animals are no longer considered offenses under BNS.

Following the path of the above judgement, the law recognises the importance of defining the term “Transgender” under its definition clause.

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

Explanation. — *“transgender” shall have the meaning assigned to it in clause (k) of section 2 of the Transgender Persons (Protection of Rights) Act, 2019;”*⁶

- **Adultery**

In view of Apex Court's judgement in Joseph Shine's⁷ case the offence of Adultery has been deleted, however, second BNS retains Section 498 of the IPC (Section 84) which penalises a man for enticing the wife of another man so that she may have intercourse with any person.

“Section 84: Enticing or taking away or detaining with criminal intent a married woman-
*Whoever takes or entices away any woman who is and whom he knows or has reason to believe to be the wife of any other man, with intent that she may have illicit intercourse with any person, or conceals or detains with that intent any such woman, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”*⁸

- **Addition of new offence as “Organised Crime”**

Under Section 111 of the new law, organized crime has been included as an offense. If this crime leads to the death of an individual, the maximum punishment authorized is the death penalty.

The Act defines Organised crime as *“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 organised 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*

⁶ Section 2, Bbharatiya Nyaya Sanhita 2023

⁷ 2019(3) SCC 89

⁸ Section 84 Bharatiya Nyaya Sanhita 2023

organised crime.”⁹ It also provides a definition for an organized criminal syndicate, which is a group engaged in ongoing illegal activities and economic offenses.

The legislation also aims to establish the penalties for engaging in organized crime. If such offense has led to the fatality of any individual, the perpetrator shall be subject to capital punishment or life imprisonment, and shall additionally be subject to a fine of no less than 10 lakh rupees. Otherwise, the individual will face imprisonment for a minimum of five years, and maybe life imprisonment. Additionally, they will be subject to a fine of no less than five lakh rupees. According to section 111(4) of BNS 2023, the penalty for being a participant in an organized criminal syndicate is a prison sentence ranging from a minimum of five years to life imprisonment, along with a fine of at least five lakh rupees.

The BNS has incorporated Petty Organised Crime as a novel offense inside Section 112. Participating in any minor organized criminal action carries a sentence of imprisonment ranging from one to seven years, along with the potential for a fine. **“Section 112- Petty Organised Crime:** (1) *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.*

Explanation. —For the purposes of this sub-section "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.

(2) *Whoever commits any petty organised crime shall be punished with imprisonment for a term which shall not be less than one year but which may extend to seven years, and shall also be liable to fine*”¹⁰

- **Inclusion of “Terrorist Act”**

One notable modification arising from the rewriting of criminal law is the incorporation of the "Terrorist Act," which was previously absent from the IPC. The updated iteration of the bill, presented in August under section 113 of the BNS, 2023, offers a more expansive interpretation of the offense labelled as a "terrorist act" in contrast to

⁹ Section 111 Bharatiya Nyaya Sanhita 2023

¹⁰ Section 112 Bharatiya Nyaya Sanhita 2023

the original version. It encompasses actions carried out with the purpose of intimidating or potentially intimidating the "economic security of India" and that result in or are likely to result in "harm to the financial stability of India through the creation, smuggling, or distribution of fake Indian paper currency, coins, or any other material".

These actions are now classified as "terrorist acts" as well. Furthermore, any actions that endanger or have the potential to endanger the "unity, integrity, sovereignty, and security of the nation, or that cause terror among the population", are also considered as offenses. The offense incurs a sanction of either capital punishment or lifelong incarceration. Persons involved in plotting, aiding, or abetting such conduct, or deliberately facilitating the commission of a terrorist attack, may face a mandatory imprisonment term of at least five years, which has the potential to be prolonged to a life sentence.

- **Violation of India's sovereignty, unity, and integrity**

The BNS imposes penalties for actions that pose a threat to the "unity and integrity of India", while "sedition" criminalizes "actions against the government". The BNS substitutes the concept of "government" with that of the "country".

Section 152 of the new BNS retains certain elements of Sedition. It states "that anyone who intentionally or knowingly, through spoken or written words, signs, visible representation, electronic communication, financial means, or other methods, incites or attempts to incite secession, armed rebellion, subversive activities, encourages separatist sentiments, or poses a threat to the sovereignty, unity, and integrity of India, or engages in such acts, will be punished with either life imprisonment or imprisonment for up to seven years, and may also be fined".¹¹ Expressions of disapproval towards the government's measures or administrative actions, aimed at seeking their authorized modification, will not be considered an offense according to this article.

- **Mob Lynching**

The act of 'mob lynching' has been designated as a distinct criminal offense under the BNS. It carries the harshest possible punishment, which is the death penalty, as stipulated in section 103 of the BNS. "*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***

¹¹ Section 152 BNS 2023

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,”¹² states Section 103.

- **Reduced penalties for doctors in light of negligence**

The new BNS has created a special category for doctors under Section 106 with respect to the penalties for “causing death by medical negligence”. The BNS raises the maximum sentence for causing a death via negligence to five years in prison. However, the penalty is lowered to a maximum of two years in prison if a doctor is found to be at fault for such a death. The Indian Penal Code (IPC) stipulates in Section 304A that causing death by negligence carries a maximum term of two years in prison, a fine, or both. The IPC Section 304A does not have a specific classification for doctors.

Additionally, it stipulates harsh penalties for "hit and run" incidents. According to the legislation, a driver faces a potential 10-year prison sentence as well as a possible fine if they cause someone else's death by reckless or irresponsible driving and fail to report the occurrence to a police officer or magistrate right after.

- **Introduced Snatching as A Distinct Offence**

According to Section 304 of BNS, theft is considered as snatching when the offender forcefully and swiftly seizes or takes away moveable goods from a person or their possession in order to conduct theft. The act of snatching is subject to imprisonment, which can last up to three years, and is also subject to a fine.

- **Attempt To Suicide not an offence**

Section 309 of the Indian Penal Code (IPC) prescribed penalties for the act of attempting to commit suicide. However, this strict provision is not included in the BNS (Bare Necessities Statute) and has been entirely removed. Section 226 of BNS makes it a crime to try to commit suicide in order to force or prevent the use of legal authority. The punishment for this offense can include up to one year of simple imprisonment, a fine, community service, or a combination of these penalties.

¹² Section 103 Bharatiya Nyaya Sanhita 2023

Apart from the above major changes, the following **minor changes** in the form of deletion of few sections as follows:

1. “Section 14 ‘Servant of Government’
2. Section 18 ‘India’
3. Section 29A ‘Electronic record’
4. Section 50 ‘Section’
5. Section 53A Construction of reference to transportation
6. Section 124A Sedition
7. Section 153AA Punishment for knowingly carrying arms in any procession
8. Section 254 Delivery of coin as genuine, which when first possessed, deliverer did not know to be altered
9. Section 264 to 267 Offences relating to weights and measures
10. Section 309 Attempt to commit suicide
11. Section 310 to 311 Thug and Punishment for Thug
12. Section 376DA & 376DB Gang rape on woman under the age of 16 and 12 respectively
13. Section 377 Sexual intercourse against the order of nature
14. Section 444 Lurking house trespass at night
15. Section 446 Housebreaking at night.
16. Section 497 Adultery”¹³

III. CRITICAL ANALYSIS

The primary objective of this newly enacted legislation is to eliminate the influence of British colonial laws on the current criminal justice system. The Union Government has consistently used the language of decolonization, justice, and laws that prioritize the interests of citizens to support this legislative reform initiative. In order to evaluate the effectiveness of the new laws in achieving their objective, it is necessary to first identify the colonial aspects of this legislation. The analysis examines the ways in which the measure fails to achieve its declared objective of decolonization. We contend that the BNS amplifies the authority of the state and

¹³ Sections from Indian Penal Code omitted in BNS 2023

law enforcement, maintains offenses based on outdated moral standards, and broadens the scope of punishment through expansive and loosely defined offenses.

- **Offences against the state**

One key feature of colonialism is the continuous and unbroken expansion of the State's power to maintain law and order among its population. The new criminal laws do not materially break from the colonial ethos of a government with strong authority. Instead, by the augmentation of police authority and the imposition of stringent fines for loosely defined transgressions, they intensify the power imbalance between the government and the individual. A lasting remnant of colonial influence on our legal system is the incorporation of the IPC's chapter named "Offences Against the State"¹⁴, which encompasses the crime of sedition as outlined in Section 124A.

Although most of the chapter in the BNS remains unchanged, the phrase "sedition" has been substituted with a new offense described in section 152 of the BNS, known as the "Act undermining sovereignty, unity, and integrity of India". This innovative offense has unique attributes when compared to the similar offense in the IPC.

Conversely, Section 152 of the Bharatiya Nyaya Sanhita (BNS) imposes penalties for actions that encourage 'subversive activities' or endorse 'sentiments of separatist activities' or present a danger to the "sovereignty or unity and integrity of India." Despite the removal of the phrase "sedition" from the criminal statute, the new clause appears to be equally restrictive in terms of curtailing rights, exactly like its predecessor. Furthermore, the BNS neglects to provide clear guidelines for determining the precise parameters of 'stimulating subversive operations' or 'fostering sentiments of separatist actions'. Since gaining independence, courts have frequently been assigned the responsibility of analyzing Section 124A of the Indian Penal Code (IPC), specifically in relation to its effect on the constitutional assurance of freedom of speech. The courts have narrowed the extent of the Article to solely prohibit speech that presents an immediate danger to public order. The interpretation of Section 152 of the BNS, a newly implemented provision with updated criteria, is unclear due to the inapplicability of the criteria previously set by the courts in cases related to Section 124A of the IPC.

¹⁴ Chapter VI IPC 1860

The Government had expressed clearly and also stated that the amended legislation refrains to categorize “sedition” (*rajdroh*) as a criminal conduct, but rather deems 'treason' (*deshdroh*) as an offense that can be punished. This alteration signifies that the act of criticizing the government is no longer seen as a punishable violation. Nevertheless, this does not indicate a deviation from the IPC. The Section 124A of the Indian Penal Code (IPC) excludes statements that criticize government acts, as long as these remarks do not incite enmity and alienation as specifically stated in the clause. Section 152 of the BNS grants a comparable exception. Therefore, it is not evident how the conditions in the new law change much from those contained in the old provision. Furthermore, the ongoing debate surrounding the sedition statute has consistently focused on how the state uses it to suppress opposition by arresting and imprisoning individuals for an extended period of time.

- **Traces of outdated moral beliefs**

An evident manifestation of the colonial legacy of the IPC is the integration of Victorian morality throughout its framework. These instances are evident in the exemption for marital rape (Section 375, IPC), the inclusion of phrases like 'outraging the modesty of a woman' (Section 354, IPC), the delineation of obscenity (Section 292, IPC), and the prohibition of abortion (Section 312, IPC). Let us analyze each of these subjects individually.

- **Marital Rape:** According to Section 63 of BNS, except in cases of rape, “sexual intercourse” or sexual actions between a “man” and his “wife” who is not below eighteen years of age would not be considered rape. According to the Indian Penal Code (IPC), the minimum age for a wife to not be considered a victim of rape was set at “fifteen years”. In 2017, the Supreme Court, in the case of Independent Thought v. Union of India¹⁵, interpreted Exception 2 to Section 375 IPC to mean that the age of consent for sexual intercourse with a minor wife should be raised from fifteen years to eighteen years. This was done in order to include sexual acts with a minor wife under the definition of rape.

Considering that the objective is to eliminate outdated rules from our criminal justice system, the implementation of the BNS would have been an ideal chance to abolish the exemption and acknowledge the physical autonomy and sexual independence of

¹⁵ AIR 2017 SC 4904

married women. Nevertheless, the BNS maintains the exception in Section 63, which pertains to the offense of rape.

- **Committing acts of sexual assault on women:** An important element of colonial impact on the Indian Penal Code (IPC) is the integration of the notion of 'modesty' in Sections 354 and 509, which derived from a patriarchal understanding of sexual aggression. This deviates from the notion of sexual assault as a violation of the victim's control over their own body, and so allows ethical factors to impact the process of making decisions in cases of sexual violence. Considering this recognition, the report of 2013 from the Committee¹⁶ suggested the modification and rewording of Section 354. A suggestion was put forward to remove the reference to “outraging the modesty of women” from the section and replace it with the term “sexual assault”. This revision was not incorporated into the amendment of the IPC in 2013. Including it in the new Code would have represented a substantial departure from the utilization of language that pertains to colonial ethical principles, which are based on notions of integrity, purity, and humility as evidenced in our legislation. However, the BNS continues to incorporate the terms 'modesty' in Sections 74 and 79.
- **Obscenity:** The restrictions against obscenity in the Indian Penal Code (IPC) demonstrate the prevailing moral conservatism in laws inherited from the colonial period. Section 292 of the Indian Penal Code (IPC) prescribes sanctions for the act of selling, exhibiting, publishing, or otherwise spreading obscene material. Furthermore, Section 294 of the Indian Penal Code (IPC) enforces sanctions for participating in lewd behaviour in public. The determination of what constitutes 'obscenity' under these sections is based on whether the materials or activities in question are 'lascivious' or cater to 'prurient interests', or if they have a propensity to 'deprave and corrupt' individuals. The Supreme Court back in 1965 decision in *Udeshi v. Maharashtra*¹⁷ stated that any literature that contained ‘treating with (sic) sex in a manner appealing to the carnal part of human nature, or having that tendency’ would be considered obscene. This suggested that any content that tended to provoke sexual impulses would be judged

¹⁶ Justice Verma Committee Report 2012

¹⁷ 1965 AIR 881

obscene within the meaning of the law. In 2014, the Supreme Court in the case of *Sarkar v. West Bengal*¹⁸ introduced a slightly modified criterion for determining obscenity known as the 'community standards test.' According to this test, materials that are sexually explicit and likely to arouse lustful thoughts can be considered obscene. However, it is important to evaluate obscenity based on the perspective of an average person and by considering the prevailing standards of the community at that time. Both of these tests for obscenity arise from the excessively wide and subjective wording of the provision itself, and rely only on personal and communal morality to ascertain whether something is obscene or not. Recently, the Supreme Court has determined that criminalization should be based on constitutional morality rather than personal morality. Adopting this approach is the single means of guaranteeing that the criteria for criminalization are not exclusively determined by an individual's subjective moral values. Modifying these laws would have been a positive move in the process of decolonizing the legislation. Regrettably, the BNS has preserved the precise phrasing of the IPC rules regarding obscenity.

- **Abortion being made Illegal:** Section 312 of the IPC is a remaining example of moralism in our criminal laws, as it makes abortion a criminal act. According to this law, any anybody who intentionally induces a woman to have a miscarriage can be held legally responsible and subject to punishment. This also encompasses a pregnant lady who elects to undergo an abortion. The sole exception arises where such abortion or miscarriage is intentionally performed in good faith to preserve the life of the pregnant woman. The “Medical Termination of Pregnancy Act, 1971 (‘MTP Act’)” grants doctors protection from criminal prosecution when they conduct abortions under specified situations outlined in the Act, thus introducing more exceptions to this clause. Although the MTP Act has made access to abortions more lenient, it still depends on establishing specific circumstances when abortion procedures are not considered unlawful. The implementation of a rights-based approach to abortion, which unfortunately did not occur, would have been a significant advancement towards decolonization.

¹⁸ 2014(4) SCC 481

The replacement of the legendary IPC 1860 with BNS,2023 creates an impression that the upcoming law will introduce new provisions and minimize discrepancies with the current social setting and other existing laws. However, it is observed that there are instances of DUPLICATING OFFENSES found in other special laws.

Upon its enactment, the IPC comprehensively covered all criminal offenses. Over the course of time, unique statutes have been established to deal with particular topics and associated transgressions. Certain offenses have been eliminated from the BNS. Nevertheless, numerous offenses are still being maintained. The BNS includes other offenses, such as organized crime and terrorism, which are already addressed by existing legislation. The presence of overlapping legislation might result in increased burdens and expenses associated with compliance. Additionally, it might result in the existence of various statutes imposing different sanctions for same transgressions. By deleting these offenses, it is feasible to eliminate duplication, potential discrepancies, and multiple regulatory systems.

“BNS/BNSS	Special Law
<i>Adulteration of food or drink for sale</i>	
Imprisonment up to 6 months, fine up to Rs 5,000, or both. Non-Cognizable, bailable. (IPC Sec. 272, 273; BNS Clause 272, 273)	The Food Safety and Security Act, 2006: Imprisonment up to life, and a fine up to Rs 10 lakh for manufacture, storage, sale of unsafe food. Sentence proportionate to damage caused. (Sec. 59)

Adulteration of drugs, and sale of adulterated drugs

Adulteration penalised with imprisonment up to a year, fine up to Rs 5,000, or both.

Sale of adulterated drugs penalised with imprisonment up to 6 months, fine up to Rs 5,000 or both.

Non-Cognizable, bailable. (*IPC Sec. 274, 275; BNS Clause 274, 275*)

The Drugs and Cosmetics Act, 1940: Consumption of adulterated drugs causing death or grievous hurt penalised with imprisonment between 10 years and life, and fine of at least Rs 10 lakh, or 3 times the value of the seized drugs, whichever is higher.

In other cases, penalty is imprisonment of 3-5 years, and fine of at least Rs 1 lakh, or 3 times the value of the seized drugs, whichever is more. (*Sec. 27*)

Unlawful compulsory labour

Imprisonment up to one year, fine, or both.

Cognizable, Bailable. (*IPC Sec. 374; BNS Clause 144*)

The Bonded Labour System (Abolition) Act, 1976: Imprisonment up to 3 years and fine up to Rs 2,000. (*Sec. 16, 17, 18*).

Abandoning a child

Parent or guardian abandoning a child below the age of 12 is punishable with imprisonment up to 7 years, fine, or both.

Cognizable, bailable. (IPC Sec. 317; BNS Clause 91)¹⁹

The Juvenile Justice Act, 2015: “Abandoning or procuring a child for abandonment is punishable with imprisonment up to 3 years, fine up to Rs 1 lakh, or both. Biological parents abandoning a child due to circumstances beyond their control are exempt.”²⁰ (Sec. 75)

IV. CONCLUSION

From the above discussion, it is evident that the new law is bound to face and travel through thorns and it is going to take some time before it is fully adapted by the society of this country. However, in light of the above discussion, it is mandatory to pinpoint few positive aspects of this particular act:

- Several commendable changes have been implemented in the BNS. These include the incorporation of technology and its inclusion in the penal statutes by updating the definitions of specific offenses. In addition, the BNS now maintains uniformity in the utilization of specified terminology, and community service will be implemented as a penalty for small transgressions. Nevertheless, the establishment of the essential legal framework and the education of professionals, such as judges and law enforcement officers, will be crucial for the successful enforcement of these laws.
- Further, deletion of sedition²¹ shows that the Government is aware of the conscience of the masses. The removal of sedition as a criminal offense signifies a departure from the colonial roots of the Indian legal system.

¹⁹< <https://prsindia.org/billtrack/prs-products/bharatiya-nyaya-sanhita-2023-1701767043>> accessed on 2nd April 2024

²⁰ Section 75 JJ Act 2015

²¹ Section 124A IPC1860

- Implementing community service as a penalty for specific crimes is a positive move towards adopting a rehabilitative approach to punishment.

However, it has to be clearly pointed out loud and clear that there were several “Missed opportunities”. Few of them can be reproduced as below:

- ✓ Currently, community service is only available as a penalty for six minor offenses inside the BNS. In addition, there are no established criteria or standards to determine the specific method and duration of community service as a form of punishment.
- ✓ BNS failed to seize the chance to legalize a range of offenses that may be classified as civil disputes. The Ministry of Home Affairs suggested this in 2007, as stated in their “Report of the Committee on Draft National Policy on Criminal Justice.”²² The potential omission of the allegation of defamation under Section 356 of the BNS could result in the resolution of the matter as a civil dispute between the individuals involved. The new criminal legislation missed the opportunity to incorporate alternate resolutions that are not part of a trial.
- ✓ Non-adjudicative outcomes conserve resources that would otherwise be expended on the trial process, and frequently result in substantial monetary settlements. This concept is prevalent in many Western countries, such as the United States of America and the United Kingdom.
- ✓ The minimum age of criminal responsibility maintained by BNS is seven years, with the exception of cases when a child is deemed incapable of comprehending the nature and repercussions of their conduct, in which case the age is raised to twelve years. This falls well below the minimum age of criminal liability in other legal countries. Furthermore, this action contradicts the guidance provided by the “United Nations Committee on the Rights of the Child”, that suggested setting the minimum age for criminal responsibility at twelve years.
- ✓ The BNS encompasses multiple provisions that align with specific legislations, such as the “Unlawful Activities (Prevention) Act, 1967, state laws pertaining to organized crimes like the Maharashtra Control of Organized Crime Act, 1999, and the Gujarat

²² Ministry of Home Affairs, Report of the Committee on Draft National Policy on Criminal Justice, July 2007, available at https://www.mha.gov.in/sites/default/files/2022-09/DraftPolicyPaperAug_4%5B1%5D.pdf (last accessed on 2nd March 2024)

Control of Terrorism and Organized Crime Act, 2015”.²³ This implies that there are similar methods and instruments available to legally address similar crimes. Consequently, this results in a rise in the onus of regulatory responsibilities and expenses. Moreover, this exacerbates the ambiguity in judicial proceedings when attempting to press charges against such activities. While the BNS presents both benefits and drawbacks, like any new law, it will require thorough scrutiny by the courts to assess its legitimacy and constitutionality.

By passing up this opportunity to change the law on these issues, the new Codes have actually reinforced and validated the colonial nature of our current criminal legislation. Apart from the specified stipulations listed before, the lack of significant advancements in law enforcement could be considered the strongest objection to the logic of decolonization. Its selective application, which differed for the white and 'native' populations, was the main source of the law's colonial logic. The outcomes of criminal trials were impacted by social status, caste, and socioeconomic class even among the indigenous population. Prison data that emphasizes the disproportionate impact of the criminal justice system on oppressed castes and religious minorities shows how persistent this colonial worldview is even today. While the recently enacted criminal laws claim to place a high priority on citizen participation in the administration of justice, they fail to address the discriminatory effects and application of these laws. Indeed, in a society where inequality is growing, the state's reinforcement will make these gaps spread even more. Furthermore, there has been a missed opportunity to adequately address the inequalities produced by the criminal justice system because major components of BNS, BNSS, and BSA have been directly taken from the IPC, CrPC, and the IEA.

²³ <https://www.nls.ac.in/blog/bharatiya-nyaya-sanhita-decolonising-or-reinforcing-colonial-ideas/> accessed on 2nd April 2024