"Modernizing Criminal Justice: Recent Amendments to the IPC"

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Abstract: Public participation and a sense of liberty exist in countries that provide a safe environment to their communities and ensure the security of their livelihood. Maintaining the peace and security of a country plays an important role in effective governance. Crime, which is considered as a major threat to the public should be reduced by providing an efficient judicial system. The judicial system differs from country to country depending upon the population, political stability, and crime rate. Criminal laws are made while keeping in mind factors such as psychology, intention, and crime rate of a particular community. Crime not only affects the peace and security of a country but also impacts the equality and poverty of a particular area. In order to eliminate the negative impacts on society stringent laws are made for the protection of the same. This paper highlights the steps that resulted in the evolution of a criminal code i.e. IPC which is now named as Bharatiya Nyaya Sanhita. Also, it tries to establish a comparative insight of traditional criminal laws to that of prevailing in the modern era. Finally, it studies several key provisions enumerated in Bharatiya Nyaya Sanhita along with the amendments done in the code. This research mainly focuses on the new provisions of the Bharatiya Nyaya Sanhita, its aim, and the need to shift from state state-orientated approach to a citizen-centric approach.

Index Terms: Substantive, offenses, punishment, amendments, society.

INTRODUCTION

“Thomas Holland, the British jurist, in his book ‘The Elements of Jurisprudence’ defined ‘Substantive Law’ as the laws which specify the way the laws will aid to protect rights.”

The Primary purpose of substantive criminal law is to assist the court in determining the guilt of the accused and to ensure rigorous punishment to the convict while compensating the victim as per the different situations. IPC is a substantive law on criminal offenses. The recommendations of first Law Commission of India established in 1834 were taken into consideration while drafting the code. It encompasses variety of offenses related to public health and safety, property, public tranquility, etc with their respective punishments. It is the principal law that deals with criminal acts in India. It has undergone several revisions and amendments since 1860 as earlier there was no uniform law and the sole basis for penalizing criminal acts was Muhammedan Law. In order to make the legal system more effective there is a need to modify and stringent the penal laws which led to the enactment of Bharatiya Nyaya Sanhita 2023 which aims to modify the punishments for certain offenses. It has introduced community service as a punishment for certain offenses and has also highlighted the importance of offenses against women.

HISTORICAL BACKGROUND

The history of the Indian Penal Code can be traced back to the times when elements were drawn from the Napoleonic Code and Edward Livingston’s Louisiana Civil Code of 1825. It was in the year 1837 when for the very first time the final draft of the Indian Penal Code was submitted to the Governor General of India, though it has been revised again. The code was not on record till 1857, then after the Indian Rebellion of 1857, it was again revised by Barnes Peacock (later become the Chief Justice of Calcutta High Court). The code was written by Lord Thomas Babington Macaulay in


2 WIKIPEDIA, https://en.m.wikipedia.org/wiki/Indian_Penal_Code#:~:text=The%20code%20was%20drafted%20on%20the%20British%20rule%20in%201862%20(last%20visited%20June%2015,%202024).
1834 but was not able to see the penal code as he died near the end of 1859 and the code came into force on 1 January 1862.

During the initial phase of the British administration, the East India Company did not interfere with the criminal law of the country, it was in the year 1772 that the company for the first time interfered, and from then till 1861 the British government did alter the Muhammedan Law as per time and needs of the criminal justice system.

UNVEILING THE PROVISIONS OF BHARATIYA NYAYA SANHITA

“Law is not static but dynamic and changes should be taken into account by legal practitioners” as quoted by Justice B R Gavai. IPC is a principal law on criminal offenses that deals with offenses related to the human body, public order, public health, defamation etc. It has undergone several revisions and amendments as per the changing needs and demands of the society. To transform the criminal justice system the Bharatiya Nyaya Sanhita bill was proposed in 2023 which has replaced the IPC consisting of 511 sections. At present Bharatiya Sanhita has 358 sections. It has been passed in both houses of the Parliament and has also received the President’s assent on December 25, 2023.

Several Key Provisions in BNS

1. Community Service as a punishment – Under the Indian Penal Code (IPC) there are 5 types of punishment defined u/s 53 of the act. BNS has introduced COMMUNITY SERVICE as the 6th type of punishment. As the name suggests it is the order of the court directing the convict to perform certain work as a form of punishment. It is only given to first-time petty offenders like non-appearance in response to a proclamation etc. Certain offenses for which Community service can be awarded as punishment are-
   - Section 202- Public Servant unlawfully engaging in trade.
   - Section 209- Non-Appearance in response to a proclamation.
   - Section 226- Attempt to commit suicide to compel or restrain the exercise of lawful power.
   - Section 355- Misconduct in public by a drunken person.
   - Section 356- Defamation.

2. Mob-Lynching – It is a new provision incorporated under section 103(2) of BNS. It means if a group of five or more persons acting in concert murders on the grounds of race, caste, sex, etc then each member of such group shall be liable for the punishment which is death or Life imprisonment, and shall also be liable to fine.

3. Organized Crime- It is a new provision incorporated under section 111 of BNS. It means if any unlawful activity is continuously carried on by any person or a group of persons either as a member of a union or on behalf of a union then that person shall be liable for committing the offence of Organized Crime. Activities include-
   - Kidnapping
   - Robbery
   - Vehicle Theft
   - Extortion
   - Land grabbing
   - Economic-offence
   - Cybercrime
   - Contract killing
   - Trafficking in persons, drugs, weapons
   - Human Trafficking for prostitution

Punishment – Anyone who attempts or commits an organized crime shall be punished with Life imprisonment or death and a Rs 10 Lakhs fine in case the offense results in the death of any person and in any other case the punishment shall be less than 5 years extending to Life imprisonment and a fine of at least 5 lakhs rupees.

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5 Ibid.
4. **Petty Organized Crime**- It is a new provision incorporated under **section 112** of BNS which states that if any member of a gang either singly or jointly commits any of the said acts is said to commit the offense u/s 112 of BNS. Acts include-

- Any act of theft
- Snatching
- Cheating
- Unauthorized selling of tickets
- Unauthorized betting or gambling
- Selling of public examination question papers
- Or any other similar criminal act

**Punishment**- Anyone who commits the offense u/s 112 shall be punished with imprisonment of not less than one year but which may extend to seven years, and shall also be liable to fine.

5. **Terrorist Act**- It is a new provision incorporated under **section 113** of BNS which states that if any person performs any act with the intent to threaten or likely to threaten the unity, integrity, sovereignty, security, or economic security of India or with the intent to strike the terror or likely to strike terror in the people of India or in any foreign country,

(a) By using bombs, dynamite, or other explosive substances or inflammable substances or firearms, or other lethal weapons or poisonous or noxious gases or any other substance of hazardous nature which causes or likely to cause –

- Death or injury to any person
- Loss or damage to the property
- Disruption of any services that are essential to the life of the community in India or any foreign country
- Damage to the monetary stability of India
- Damage or destruction to any property in India or in any foreign country that is used for the defense of India.

(b) show of criminal force or attempts to do so or cause the death of any public functionary or attempts to cause the death of any public functionary.

- detains, kidnaps, or abducts any person and threatens to kill or injure such person in order to compel the government of India or government of any foreign country to do or abstain from doing any act, commit a terrorist act.

**Punishment**- Anyone who commits the offense u/s 113 of BNS shall be punished with death or imprisonment for life and shall also be liable for a fine in case the offense results in the death of any person and in any other case be punished with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable for fine.

6. **Snatching** – It is a new provision incorporated under **section 304** of BNS. This provision states that if any person in order to commit theft, suddenly or quickly or forcibly seizes or secures or grabs or takes away from any person or from his possession, any moveable property is said to commit the offense of Snatching.

**Punishment**- Anyone who commits the offense u/s 304 of BNS shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine.

Situations under which offense is punishable under this section and u/s 112.

- If snatching is done by a single person who is not a part of any gang or group then it will be punishable under this section.
- If snatching is done by a person who is a member of a gang or group, then it will be punishable under section 112 as petty organized crime.

**AMENDMENTS IN THE CODE**

1. **Increased punishment in hit-and-run cases** – Under IPC, section 304 A IPC deals with causing death by negligence with a maximum punishment of 2 years but due to the introduction of the new code i.e BNS the punishment has been increased from a maximum of 2 years to a maximum of 5 years and is dealt under **section 106** of BNS.

2. **Omission of Sedition**- Under IPC, section 124 A deals with the offense of Sedition but it has been omitted instead the offense of Treason has been introduced under **section 152** of BNS which states that if any person intentionally uses his words, either spoken or written or by signs or by visible representation or by electronic communication excites or attempts to excite succession or armed rebellion or encourages feeling of separatist activities

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6 Top, supra note 4.
or endangers sovereignty or unity or integrity of India shall be punished with imprisonment for life or with imprisonment which may extend to seven years and shall also be liable for fine.

3. **Omission of Section 242**- Under IPC section 242 deals with the Possession of a counterfeit coin by a person who knew it to be counterfeit and the person who has possession of such counterfeit coin shall be punished with imprisonment which may extend to three years and shall also be liable to fine, but the provision under sec 242 IPC has been amended instead **section 178** of BNS has been introduced which states that mere possession of forged or counterfeit currency is no more punishable in order to protect the public in possession of the same.

4. **Punishment for gang rape**- Under IPC section 376D death sentence was provided for gang rape of women under 12 years of age but as per section 376DA no death penalty was provided for gang rape of women aged below 16 but above 12 years. As per **Section 70(2)** of BNS death penalty will be provided for gang rape of a woman under 18 years of age.  

**NEED TO REVAMP THE CRIMINAL JUSTICE SYSTEM**

The main aim behind the introduction of the three bills is to bring about several changes, additions, and modifications in the definition, provision, and certain revisions in the punishment of several crimes. Further, the vision behind the introduction is to address the issues and challenges of the existing criminal justice system and also to fulfill the demands of society. As the demands and needs of society change from time to time there is a need to change the law as per the changing demands in order to compete with the technicalities of the legal system. IPC is a blend of outdated provisions that did not align with the evolving modern rights and thus raises a need to amend the existing code.

**CONCLUSION**

In the event of the enactment of the three new laws, “Chief Justice of India D Y Chandrachud called it as a ‘watershed moment’, as there is no other law that affects the day-to-day conduct of the society like the criminal law”. The origin of the existing laws can be traced back to the colonial era, it is necessary to come out with the state-citizen relationship which is not under the influence of British rule but on the principles of the citizen-centric approach. The provisions enumerated in BNS will improve the efficiency, fairness, and transparency of the legal system. As a whole BNS is a comprehensive legislation that is consistent with the evolving needs and commitment to justice.

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