



New Criminal Laws in India: Reform or Repackaging?

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Abstract

India has reformed its colonial-era criminal laws by introducing new criminal laws i.e., Bharatiya Nyaya Sanhita 2023, the Bharatiya Nagrik Surksha Sanhita 2023 and the Bharatiya Sakshya Bill-2023. The new laws aim to deliver justice rather than punishment, uphold the Indian ethos and values, and tackle the modern challenges and threats to the nation's peace and security. The new laws also create new offences and penalties for crimes such as terrorism, corruption, mob lynching, and organized crime, and scrap the sedition law, which was often abused to silence dissent and restrict civil liberties. The new laws also make the justice system more efficient and effective, by using modern technology and innovation to facilitate faster and easier communication, documentation, and verification of evidence. The new laws also speed up the trial process, by allowing summary trials, video trials, e-filing of FIRs, and setting time limits for investigation and prosecution. The new laws also recognize and support the victims of crime, by providing them with adequate compensation, restitution, and rehabilitation services. The new laws also protect and empower women and children.

Keywords: new criminal laws- 2023, Bharatiya Nyaya Sanhita 2023, the Bharatiya Nagrik Surksha Sanhita 2023 and the Bharatiya Sakshya Bill-2023 nation's peace and security, modern technology, trial process, video trial, women, children.

INTRODUCTION

The country is set to introduce three new criminal laws that have sparked a nationwide debate. The Indian Penal Code 1860 will be replaced by the Bharatiya Nyaya Sanhita 2023 (BNS). The Bhartiya Nagrik Suraksha Sanhita 2023 (BNSS) will update the existing Criminal Procedure Code 1973. Similarly, Bharatiya Sakshya Bill 2023 will be in place of the Indian Evidence Act, 1872.

Some people question the need and relevance of these laws, arguing that they are nothing but old laws with new labels. Others, however, support the laws as a timely and effective response to the changing circumstances and challenges of crime. They believe that the laws will deter criminals by instilling fear in their minds and reducing crime rates. To catch the debate, we need to know the changes introduced by the government.

Changes introduced by Bharatiya Nyaya Sanhita 2023

356 Clauses: The IPC has 511 sections, divided into 23 chapters, covering various offences and punishments. The BNS has 356 clauses, divided into 19 chapters, covering not only offences and punishments but also general principles of criminal law, such as mens-rea, actus reus, causation, defences, etc.

Five Punishments: The IPC prescribes six types of punishments: death, imprisonment for life, imprisonment (rigorous or simple), forfeiture of property, fine, and whipping (abolished in 1955). The BNS prescribes five types of punishments¹: death, imprisonment for life, imprisonment (rigorous or simple), fine, and community service. The BNS also introduces the concept of minimum and maximum sentences for each offence, whereas the IPC only specifies the maximum sentence. The BNS also provides mandatory compensation to victims in certain cases.

New Offences: The IPC defines various offences against the state, public tranquillity, human body, property, public health, safety, morals, etc. The BNS also defines similar offences but with some changes and additions. For example, the BNS repeals the controversial sedition law and replaces it with a new offence of waging war against India² or its allies.³ The BNS also

¹ Clause 4, The Bhartiya Nyaya Sanhita 2023

² Clause 145, The Bhartiya Nyaya Sanhita 2023

³ Clause 151, The Bhartiya Nyaya Sanhita 2023



introduces new offences such as cybercrime, terrorism, hate speech, sexual harassment at the workplace, acid attacks, etc. The BNS also modifies some existing offences such as rape, murder, theft, etc., to make them more comprehensive and gender-neutral and replaces it with a new offence of waging war against India⁴ or its allies.⁵ The BNS also introduces new offences such as cybercrime, terrorism, hate speech, sexual harassment at the workplace, acid attacks, etc. The BNS also modifies some existing offences such as rape, murder, theft, etc., to make them more comprehensive and gender-neutral.

Supported by new law of Evidence and Procedure: The IPC does not deal with the rules of evidence and procedure for criminal cases. These are governed by separate laws such as the Indian Evidence Act 1872 and the Code of Criminal Procedure 1973. The BNS also does not deal with these aspects directly but proposes to replace these laws with two new bills: the Bharatiya Sakshya Bill 2023 and the Bharatiya Nagarik Suraksha Sanhita 2023. These bills aim to simplify and streamline the rules of evidence and procedure for criminal cases.

The various changes may be summarized under

Waging War⁶: IPC defines sedition as bringing, or attempting to bring hatred, contempt, or exciting disaffection towards the government. It is punishable with imprisonment terms between three years, life imprisonment, and/or a fine. The Bill repeals the offence of sedition, as it has been widely criticized as a colonial relic that curbed free speech and dissent. It is now “Acts endangering sovereignty unity and integrity of India” & and “Waging war against Government of any foreign State at peace with Government of India.” These offences may involve the exchange of words or signs, electronic communication, or the use of financial means. These will be punishable with imprisonment of up to seven years or life imprisonment with or without a fine.

Organised crime: The Bill defines organized crime⁷ such as kidnapping, extortion, contract killing, land grabbing, financial scams, and cybercrime carried out by use of violence, intimidation, or other unlawful means to obtain material or financial benefits whether carried out by a single person or jointly as members of or on behalf of a crime syndicate.

Petty Organised crime: The Bill defines Petty organized crimes⁸ which cause general feelings of insecurity among citizens, and are committed by organized criminal groups/gangs. These include organized pickpocketing, snatching, and theft.

Mob lynching: The Bill specifies a separate penalty for murder committed by five or more people⁹ on specified grounds. These include race, caste, sex, place of birth, language, or personal belief. Each offender will be punishable with imprisonment between seven years and life, or death. It will also attract a fine.

Gang rape: The Bill prescribes death penalty for gang rape¹⁰ of minor. IPC allows the death penalty for gang rape of women below 12 years of age. The Bill allows the death penalty for gang rape of women below 18 years of age.

Terrorism: The Bill introduces and defines terrorism¹¹ as an act that intends to threaten the unity, integrity, and security of the country, intimidate the general public or disturb public order. Terrorist acts include using firearms, bombs, or hazardous substances (biological or chemical) to cause death, danger to life, or spread a message of fear. It also includes destroying property or

⁴ Clause 145, The Bhartiya Nyaya Sanhita 2023

⁵ Clause 151, The Bhartiya Nyaya Sanhita 2023

⁶ Chapter-VII, The Bhartiya Nyaya Sanhita 2023

⁷ Clause 109, The Bhartiya Nyaya Sanhita 2023

⁸ Clause 110, The Bhartiya Nyaya Sanhita 2023

⁹ Clause 101, The Bhartiya Nyaya Sanhita 2023

¹⁰ Clause 70, The Bhartiya Nyaya Sanhita 2023

¹¹ Clause 111, The Bhartiya Nyaya Sanhita 2023



disrupting essential services, and activities included under section 2(g) in the Unlawful Activities (Prevention) Act, 1967 such as unlawful seizure of aircraft or taking of hostages. Punishment for attempting or committing terrorism includes death or life imprisonment where the offence has resulted in the death of any person or imprisonment term between five years and life in other cases. The offender will also be liable to a fine of at least five lakh rupees.

The new BNS will also remove the effect of *Mittu Singh V. State of Punjab*¹² by which section 303 of IPC, 1860 was declared void. Now, the judiciary is free to impart punishment for life imprisonment or death punishment for murder by a life-convict.¹³

Changes introduced by the Bharatiya Nagrik Surksha Sanhita 2023

The Bharatiya Nagrik Surksha Sanhita 2023 is going to set new goals with certain new features. These features may be summarized as under:

The term seems rude and inhumane removed

- The BNSS has eliminated certain outdated and offensive terms such as ‘lunatic person’ or ‘person of unsound mind’ by replacing them with more respectful terms such as ‘having an intellectual disability.’¹⁴ The term ‘lunatic asylum’ has been appropriately changed to ‘mental health establishment.’¹⁵
- The word ‘pleader’ has been rightly replaced with the word ‘advocate.’¹⁶ Another term that has been discarded is ‘thug’ and references to crimes by ‘thugs’ have been omitted.
- The BNSS also abolishes an outdated provision, i.e., Section 153 of CrPC, where police were given the power to enter and search any place without a warrant to inspect or verify the accuracy of weights and measuring instruments. Some relevant sections have been modified to align with the Mental Healthcare Act 2017.
- Another retrograde provision has been amended, whereby under Section 64 of CrPC, the summons could only be served to an adult ‘male’ member of the family. Similarly, in Section 432 of CrPC, petitions for suspension/remission by only ‘males’ over the age of 18 were subject to higher scrutiny. Now, the word ‘male’ has been rightfully dropped.¹⁷

Much Clarity

The new code has made some important changes and clarifications regarding the treatment of Proclaimed offenders. Previously, under Section 82(4) of CrPC, only those who committed one of the specifically defined offences under IPC could be declared as Proclaimed offenders. This left out many other serious offences under IPC or other laws. The new code has removed this limitation and allowed anyone who faces more than 10 years of imprisonment or other special offences to be declared as a Proclaimed offender.¹⁸ The new code has also added a new provision to explain how to conduct a trial or inquiry in the absence of a Proclaimed offender. This section may seem harsh and unkind, but it at least provides a clear procedure for such cases.¹⁹ There are other provisions which make criminal procedure clear:

- The new code has also resolved some ambiguities for example, it has added a clear explanation to Clause 516, which deals with the calculation of the period of limitation.

¹² AIR 1983 SC 473.

¹³ Clause 102, The Bharatiya Nyaya Sanhita 2023

¹⁴ Clause-219(1)(a), The Bharatiya Nagrik Surksha Sanhita 2023

¹⁵ Clause-376, The Bharatiya Nagrik Surksha Sanhita 2023

¹⁶ Clause-2(r), The Bharatiya Nagrik Surksha Sanhita 2023

¹⁷ Clause-66 & 474, The Bharatiya Nagrik Surksha Sanhita 2023

¹⁸ Clause-34(2)(ii), The Bharatiya Nagrik Surksha Sanhita 2023

¹⁹ Clause-356, The Bharatiya Nagrik Surksha Sanhita 2023



- It has also clarified when an offender has been sentenced to pay a fine, but no such payment is paid, coercive action shall be taken.²⁰
- The new code has introduced a new chapter on Bail. This chapter defines the terms Bail and Bond.²¹ Though ‘Surety’ is still undefined.
- The Indian criminal justice system still recognizes capital punishment and the new code prescribes a detailed procedure for Mercy Petitions²² in such cases which may prove Bharat's belief in reformatory theory in criminal justice.
- The new code has updated the law to reflect the use of forensic science in crime investigation. It allows the collection of fingerprints and voice samples, in addition to specimen signatures or handwriting samples. It makes it mandatory for a forensic team to visit the crime scene to collect samples and record the process on video.²³
- The new code has also improved the safeguards for the victims. The court will have to hear the victim before allowing the withdrawal from prosecution.²⁴
- The new code has also given the accused a chance to be heard in complaint cases. The magistrate will have to hear the accused before taking cognizance of the complaint.²⁵ Now, the police must inform the victim about the progress of the investigation within 90 days, electronically or otherwise.²⁶
- The new code directs the state governments to notify a Victim Compensation Scheme²⁷ and a witness Protection Scheme.²⁸ The Code does not provide any guidelines for the scheme and states are free to decide the criteria.
- The new code has also added some additional safeguards for women. For example, a woman’s statement should be recorded by a female judicial officer²⁹ and the information about the woman’s arrest should be given to her relatives or friends.³⁰
- The new code has also changed the scope of anticipatory bail. It has removed some provisions that may have hindered the effective grant of anticipatory bail. Now, taking anticipatory bail is comparatively easy.³¹ Now, a first-time offender during pending trial can get bail after undergoing 1/3rd of the punishment³², instead of 1/2 of the punishment.
- The new code has also provided that the police will have to record the proceedings of any search and cannot abuse their power while conducting search operations. Similarly, copies of any records made during such search need to be sent to the concerned magistrate within 48 hours.³³
- The new code has also brought a humane change by adding a proviso regarding the power of police to summon people.³⁴ Now people belonging to vulnerable categories cannot be forced to attend any place other than where they live.



²⁰ Clause 462, The Bharatiya Nagrik Surksha Sanhita 2023
²¹ Chapter-XXXV, The Bharatiya Nagrik Surksha Sanhita 2023
²² Clause- 473, The Bharatiya Nagrik Surksha Sanhita 2023
²³ Clause- 176, The Bharatiya Nagrik Surksha Sanhita 2023
²⁴ Clause 360, The Bharatiya Nagrik Surksha Sanhita 2023
²⁵ Clause-223, The Bharatiya Nagrik Surksha Sanhita 2023
²⁶ Clause-193(3), The Bharatiya Nagrik Surksha Sanhita 2023
²⁷ Clause-396, The Bharatiya Nagrik Surksha Sanhita 2023
²⁸ Clause-398, The Bharatiya Nagrik Surksha Sanhita 2023
²⁹ Clause-183, The Bharatiya Nagrik Surksha Sanhita 2023
³⁰ Clause-43, The Bharatiya Nagrik Surksha Sanhita 2023
³¹ Clause-484, The Bharatiya Nagrik Surksha Sanhita 2023
³² Clause-481, The Bharatiya Nagrik Surksha Sanhita 2023
³³ Clause-185(5), The Bharatiya Nagrik Surksha Sanhita 2023
³⁴ Clause-195, The Bharatiya Nagrik Surksha Sanhita 2023



Digital India Vision

The new code has embraced the Digital India vision by allowing all trials, inquiries and proceedings, recording of evidence, examinations of parties, issuance, service and execution of summons and warrants, and many other processes to be done electronically.

- Summons can now be served digitally as well.³⁵
- Summons and warrants can be issued electronically under the ‘Issue of process’ provision.
- Notices by executive magistrates can be served online.
- Police report and other investigation-related documents can be supplied digitally.³⁶
- Order of confirmation of Death Sentence can be done electronically.
- Charges to the accused under Sessions Trial can be read electronically.

Accelerating and Time-Bound Procedure

Some of the specific changes that make the processes time-bound are:

- In the proceedings for ‘Conditional order for removal of nuisance’ the proceedings must be completed within 90 days.³⁷
- In non-cognizable offences, the police must send information to the concerned on a fortnightly basis.
- In the medical examination of a rape victim, the examination must be done within seven days, instead of ‘without delay.’
- In the committal proceedings by the Magistrate to Sessions court, the proceedings must be completed within 90 days from the date of taking cognizance, which can be extended to a maximum of 180 days by giving reasons in writing.³⁸
- In the case of deals with ‘Prosecution of Judges and Public Servants’ which states that if the government does not decide on the sanction within 120 days, it will be considered as ‘deemed sanction’.³⁹
- In the application for discharge in a Sessions trial, the accused must apply within 60 days of committal.⁴⁰
- In the framing of charges under Sessions Trial and Magistrate Trial in warrant cases, the charges must be framed within 60 days of the first hearing on the charge, as per the addition to the sections.
- In the judgment of acquittal or conviction by Session Court, the judgment must be given within 30 days after completion of arguments, which can be extended to 60 days only by giving special reasons.⁴¹
- In the prosecution evidence, the prosecution evidence can be closed if the witnesses do not appear despite taking all reasonable measures.
- In the number of offences for which a person can be charged and tried at once, the number has been increased from ‘three’ to ‘five.’ (Clause-242(1))
- To prevent unnecessary adjournments that cause delays in the trial, not more than two adjournments can be granted by the court after hearing the objections of the other party and for the reasons to be recorded in writing.⁴²

³⁵ Clause-64(2), The Bharatiya Nagrik Surksha Sanhita 2023

³⁶ Clause-193(8), The Bharatiya Nagrik Surksha Sanhita 2023

³⁷ Clause-152 & 157 (3), The Bharatiya Nagrik Surksha Sanhita 2023

³⁸ Clause-232, The Bharatiya Nagrik Surksha Sanhita 2023

³⁹ Clause-218, The Bharatiya Nagrik Surksha Sanhita 2023

⁴⁰ Clause-250(1), The Bharatiya Nagrik Surksha Sanhita 2023

⁴¹ Clause-258(1), The Bharatiya Nagrik Surksha Sanhita 2023

⁴² Clause-346(2)(b), The Bharatiya Nagrik Surksha Sanhita 2023



- In the pronouncement of the judgment in every trial, the judgment must be pronounced within 45 days of termination of the trial. The judgment also must be uploaded online within 7 days of pronouncement.⁴³

Changes admitted in the Bharatiya Sakshya Bill-2023

The Bill permits the court to accept digital records like email as evidence.⁴⁴ A careful examination of the Bill shows that it mostly reaffirms the existing status of electronic evidence. The changes introduced by the Bill may be calcified as under:

Reaffirmation of certain existing provisions with favorable transformations

The admissibility of electronic records has not changed much. The Bill has affirmed the principles laid down in the Arjun Panditrao⁴⁵ case. The definition of ‘primary evidence’ in Clause has been taken from the current Act, but four more Explanations have been added. The Explanations explain what is to be considered ‘primary evidence’ when dealing with electronic records.⁴⁶

Secondary evidence for electronic records – Potential complications

The changes made in this respect need more attention. The clause has been changed to include information created by or stored in communication devices as well. Information made through intermediaries has also been included.⁴⁷ A format of the certificate needed under Clause 63 has also been given in the Schedule of the Bill.⁴⁸ A given format would surely prevent problems at trial because of technical errors. The expert is only supposed to certify that the computer output has come from the respective computer device.⁴⁹ So, a person wanting to give electronic evidence would have to first contact an expert, give them the computer device, and ask them to make the computer output and take a certificate.

Conclusion: After going through the upcoming Criminal Laws, the author finds the various merits of these Laws. They reflect the Indian ethos and values and focus on providing justice rather than punishment. They repealed the sedition law, which was often misused to suppress dissent and curtail civil liberties. They enable faster and easier communication, documentation, and verification of evidence, by facilitating the use of modern technology and innovation in the justice system. They protect the human dignity and rights of the accused and convicted persons, by abolishing the death penalty and introducing new forms of punishment such as community service and solitary confinement. They empower and support the victims of crime, by acknowledging their suffering and providing them with adequate compensation, restitution, and rehabilitation services. They enhance the credibility and transparency of the justice system, by safeguarding the interests and safety of witnesses who are vital for establishing the truth and delivering justice. They dedicate a separate chapter to crimes against women and children and expand the scope of offences about sexual violence by employing deceitful means. Thus, there are certain major changes in Penal and Criminal procedure laws. The Law of Evidence seems almost the same with a new level. Clauses are sections. Last, but not the least, we are ready to get rid of the English laws.

⁴³ Clause-392(4), The Bharatiya Nagrik Surksha Sanhita 2023

⁴⁴ Clause-63 the Bharatiya Sakshya Bill-2023

⁴⁵ Arjun Panditrao v. Kailash Kushanrao [2020] ibclaw.in 18 SC

⁴⁶ Clause-53, Explanations 4 to 7, Bharatiya Sakshya Bill-2023

⁴⁷ Clause 63-(3), Bharatiya Sakshya Bill-2023

⁴⁸ The Schedule, Part-a & Part B, Bharatiya Sakshya Bill-2023

⁴⁹ Clause 63-(3)(c), Bharatiya Sakshya Bill-2023