FIRST WORKSHOP - 2026

PAPER PRESENTATION ON

SYMPHONY BETWEEN THE PUNISHMENTS PATTERN UNDER THE NEW CRIMINAL LAWS AND THE CONSTITUTIONAL SAFEGUARDS AS TO EX POST FACTO LAWS COVERED UNDER ARTICLE 20(1) OF THE CONSTITUTION OF INDIA AND THE RIDER CONTEMPLATED UNDER SECTION 6 OF THE GENERAL CLAUSES ACT, 1897:

SESSION – II

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The new Indian criminal laws (BNS, BSA, BNSS) must align with **Article 20(1) of the Constitution,** which prohibits retrospective punishment and excessive penalties for past acts, ensuring, as per_this article, that new laws do not impose harsher punishments for offences committed before their implementation. Section 6 of the General Clauses Act, 1897, acts as a critical rider, ensuring that pending investigations or legal proceedings under the repealed laws (Indian Penal Code/Code of Criminal Procedure) continue as if the new laws were not passed, maintaining continuity while adhering to constitutional safeguards.

Key Aspects of the Presentation:-

- **Article 20(1) and Ex Post Facto Laws:** The constitution forbids creating new crimes for past actions or increasing penalties for them. A person cannot be punished for an act that was not a crime when committed, nor can they receive a higher penalty than what existed at the time of the offence.

- **New Criminal Laws and Penalty Shifts:** While the new laws aim to modernize, any provision that enhances punishment for an old offence is unconstitutional. The focus is on ensuring "substantial fairness" in the transition of criminal cases.

- **Section 6 of the General Clauses Act, 1897:** This provision provides that when a law is repealed, it does not affect the previous operation of that law, any right/privilege acquired, or any punishment incurred. This acts as a savings clause, essential for handling cases filed under the old Indian Penal Code/Code of Criminal Procedure or Evidence Act, preventing a legal vacuum.

- **Symphony of the Three Elements:**
    - **Old Cases:** Governed by old laws via Section 6 of the General Clauses Act.
    - **New Cases:** Governed by new laws.
    - **Constitutional Boundary:** Article 20(1) acts as a limitation to ensure that "new" does not mean "punitive retrospective."

Ex post facto law refers to laws that are applied retroactively, changing the legal consequences of actions that were committed before the law was enacted in India, this prohibited under Article 20(1) of the Constitution to safeguard the principle of fairness in criminal justice. The issue of ex post facto laws often stirs debates in the legal community, as such laws can lead to individuals being penalized for actions they committed when no law prohibited them.

What is ex post facto law?

An *ex post facto law* is one that applies retroactively, altering the legal consequences of actions that were lawful at the time they were committed. In criminal law, such laws typically make an act illegal after it was performed or increased the penalties for an offence after the fact. These laws are generally prohibited, as they violate principles of fairness and legal certainty. The term comes from Latin and means “from a thing done afterwards”.

Here are the key points to understand about ex post facto laws”

***Retrospective application:** These laws are applied to past actions.
***Increase in penalties:** They can enhance penalties or punishments after an act is committed.
***Criminalization of legal acts:** Actions that were once legal can be made illegal under ex post facto laws.

Ex post facto law in India: Article 20(1) of the Constitution:-

In India, Article 20(1) of the Constitution explicitly prohibits the application of ex post facto laws in criminal cases. It ensures that no person can be convicted for an act that was not a criminal offence when committed. The article also states that no person shall be subjected to a punishment more severe than what was prescribed at the time the crime was committed.

Key points under Article 20(1) include:

Prohibition of retroactive punishment: Individuals cannot be punished for actions that were not illegal at the time they were performed.
Fairness in justice: it preserves the principle of fairness by not allowing laws to punish past actions.
* ***Legal certainty:*** It ensures that individuals are not surprised by laws being applied to their past actions.

Example of ex post facto law:-

One prominent ex post facto example in India is the retrospective application of tax laws. In 2012, the Indian government introduced a tax amendment that imposed a tax on foreign companies for transactions that had occurred earlier, thus retroactively affecting these companies. This raised concerns about the fairness and justice of such laws.

Difference between ex post facto and retroactive laws:-

Ex post facto laws and retroactive laws are often used interchangeably, but have distinct differences. Here' show they compare:

Feature	Ex post facto law	Retroactive law
Scope	Primary applies to criminal matters	Can apply to both civil and criminal matters
Purpose	Increases punishment or criminalizes acts	Changes the legal consequences of acts
Legality	Generally prohibits	Can be allowed under certain conditions

International perspective on ex post facto laws:-

Globally, many countries prohibit ex post facto laws, especially in criminal law. These laws are seen as a violation of fundamental rights and principles of justice. For instance, the United States Constitution also prohibits ex post facto laws, ensuring that individuals are not subject to new laws that retroactively change the legal status of their actions.

In contrast, some countries may allow retroactive legislation, especially in cases involving national security or public policy. However, the general consensus is that ex post facto laws undermine justice.

Exceptions to ex post facto laws in India:

Although Article 20(1) provides strong protection against ex post facto laws, there are some exceptions. In rare cases, retroactive laws may be applied, particularly in the context of national security, military offences, or taxation.

Key points about exceptions:

* **National security:** Laws related to national security may allow retroactive application.

* **Taxation:** The government may pass retroactive tax laws to close loopholes.

* **Limited scope:** The use of ex post facto laws in these areas is highly regulated.

How ex post facto laws affect criminal justice:

***Uncertainty in legal consequences:** Retroactive laws create confusion about legal rights and penalties.

***Potential for unfair punishment:** Individuals may face harsher punishments than what was applicable when they committed the act.

***Undermines legal predictability:** It erodes the public's trust in the legal system when laws are applied retroactively.

For those navigating criminal law issues, understanding how these laws affect your practice is essential.

Post facto laws in taxation and civil matters:

In the realm of taxation and civil law, post facto laws are often used to address gaps in the legal system or to correct previous errors. For example, **tax laws** can be amended retroactively to close loopholes or apply to past transactions. However, these laws can cause confusion and uncertainty for individuals and businesses that are affected.

Landmark judgments on ex post facto laws:

Indian courts have played a crucial role in interpreting the scope and application of ex post facto laws, particularly under Article 20(1) of the Constitution. The following judgments have helped define the boundaries of retroactive criminal legislation.

1) Keshavanan Madhavan Menon v. State of Bombay - (1951)

The Hon'ble Supreme Court held that Article 20(1) prohibits retrospective application of criminal laws. A person cannot be punished under a law enacted after the act was committed, nor can a harasser's punishment be imposed retrospectively.

2) N.C.Mehta v. Union of Inida - (1987)

The Hon'ble Court reaffirmed that any penal law enacted with retrospective effect that infringes on substantive rights is unconstitutional. It emphasized the protection of individuals from arbitrary and retroactive punishment.

3) Kedar Nath Singh v. State of Bihar - (1962)

This judgment confirmed that retrospective penal laws are invalid. It underscored the importance of legal certainty, stating that individuals must be aware of the legal consequences of their actions at the time they are committed.

4) T.Baral v.Henry Ah Hoe - (1982)

The Hon'ble Court ruled that when an old law is repealed and replaced with a new law carrying stricter penalties, those penalties cannot be applied to offences committed under the previous law. The ruling reinforced the prohibition on retroactive punishment.

5) R.S. Joshi v.Ajit Mills Ltd - (1977)

In this case, the Hon'ble Court clarified that the protection under Article 20(1) applies only to criminal offences as defined by the **Code of Criminal Procedure.** It does not extend to preventive detention or civil penalties.

6) Rattan Lal v. State of Punjab - (1964)

This judgment introduced the principle of beneficial interpretation. If a later law reduces the punishment for an offence, the reduced penalty can be applied retrospectively to benefit the accused. For example, imprisonment replaced by a fine may be applied to past offences.

Criticism and controversies of ex post facto laws:-

Ex post facto laws are often criticized for being unfair and for violating basic principles of justice. The main concern is that they retroactively change the legal framework, punishing individuals for acts that were previously legal. Critics argue that such laws can be used to target specific individuals or groups, creating an unstable legal environment.

Key criticisms include:

*** Violation of fairness:** These laws undermine the basis legal principle of fair treatment.

*** Unpredictable legal environment:** They create uncertainty about the legality of past actions.

*** Risk of political misuse:** Governments may use such laws to target political opponents or unpopular groups.

***Conclusion:-**

Ex post facto laws in India are strictly prohibited under Article 20(1) of the Constitution, which ensures that individuals cannot be penalized for actions that were not criminal at the time they were committed. These laws are a contentious issue globally, as they threaten the fairness of the legal system. While there are exceptions, such as in national security or taxation, the overall consensus is that such laws should be avoided to maintain a fair and just society.

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Symphony between the constitutional safeguards as to ex post facto laws covered under Article 20(1) of the Constitution of India:-

Article 20(1) of the Indian Constitution provides a critical "symphony" of safeguards against retrospective criminal laws, ensuring that no person is convicted for an act that was not an offence when committed, nor subjected to a higher penalty than existed at that time.

This provision protects against arbitrary legislative actions, restricting Parliament or State legislatures from enacting retroactive penal laws, thereby ensuring legal certainty, fairness, and fundamental rights for both citizens and foreigners.

Key Aspects of the Article 20(1) Safeguard:

- **No Retroactive Conviction:** An act innocent when committed cannot be criminalized later by a new law.
- **No Greater Penalty:** A person cannot be punished under a law that imposes a harsher penalty than what existed when the offence was committed.
- **Prospective Application:** The Hon' ble Supreme Court has clarified that this protection only applies to substantive criminal law (defining offences and punishment), not to procedural laws.
- **Scope & Exceptions:** While this applies strictly to criminal law, it does not apply to civil liabilities or special regulations like military offences.
- **Judicial Interpretation:** Courts have, through cases like *Kedar Nath Vs. State of West Bengal*, affirmed that laws creating new offences are prospective.

The provision acts as a foundational check on state power, preventing the unjust, retrospective imposition of criminal liability and maintaining the principle that people should only be punished according to the laws in force at the time of their actions.

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Paper Presentation: Symphony of Justice – Analyzing the New Punishment Pattern in India:

1. Introduction:-

- **Context:** The replacement of the colonial-era Indian Penal Code (I.P.C), 1860, Code of Criminal Procedure (Cr.P.C), 1973, and Indian Evidence Act (I.E.A), 1872, with the **Bharatiya Nyaya Sanhita (BNS)**, **Bharatiya Nagarik Suraksha Sanhita (BNSS)**, and **Bharatiya Sakshya Adhiniyam (BSA)**.
- **The Paradigm Shift:** Transition from purely retributive justice (punishment-focused) to a mix of retributive and **restorative justice** (rehabilitation-focused).
- **"Symphony" Definition:** The harmonious blending of traditional deterrent punishments (death/life imprisonment) with modern reforms (community service, fines) and faster procedural execution.

2. Key Pillars of the New Punishment Pattern:-

The new laws seek to bring uniformity and efficiency through several key shifts:

- **Introduction of Community Service:** For the first time, Section 4 of the BNS introduces "Community Service" as a form of punishment, encouraging rehabilitation for minor offences.
- **Restorative Justice Approach:** Focus on healing the victim and society, rather than merely punishing the offender.
- **Gender-Neutrality in Certain Offences:** Addressing crimes such as voyeurism (Section 77) and stalking (Section 78) regardless of the offender's gender.
- **Precedence for Women/Children:** Offences against women and children are now consolidated into a dedicated chapter (Chapter V of BNS).
- **Organized Crime & Terrorism:** Specific, severe punishments for organized crime, cyber-crimes, and terrorist acts (Sections 111 & 113, BNS).

3. The Symphony in Action: Categorized Changes:-

The punishment patterns are synchronized based on the nature of the crime:

A. Progressive/Rehabilitative Punishments (Petty Offences)

- **Community Service:** Introduced for minor offences like:
    - Attempt to commit suicide to restrain a public servant (Section 226).
    - Misconduct in public by a drunk person (Section 355).
    - First-time petty theft (< Rs.5000).
- **Plea Bargaining Improvements:** Section 290 of BNSS makes plea bargaining time-bound to speed up justice.

B. Severe/Deterrent Punishments (Heinous Crimes)

- **Mob Lynching:** Specific punishment for murder by 5 or more persons (Section 103(2)), ranging from 7 years to life imprisonment or death.
- **Organized Crime/Terrorism:** Death penalty or life imprisonment, along with heavy fines (min Rs.10 lakh if death occurs).
- **Repeat Offenders:** Harsher penalties for habitual offenders, particularly in theft (1-5 years + fine).

C. Procedural Symphony (Speed & Transparency)

- **Time-bound Investigations:** BNSS sets strict timelines for investigation (14 days preliminary inquiry) and trial (45 days for judgment after conclusion).

- **Mandatory Forensic Usage:** Forensic experts must visit crime scenes for offences punishable by 7+ years.

- **Trial in Absentia:** Proclaimed offenders can be tried in their absence, ensuring criminals cannot avoid justice by fleeing.

4. Key Differences: BNS Vs. IPC

Aspect	Old Law (IPC)	New Law (BNS)
Community Service	Not Present	Introduced for minor offences (Sec. 4)
Sedition	Section124A (Punishable)	Omitted; Replaced by Sec.152 (Acts endangering sovereignty)
Mob Lynching	General Murder (Sec. 302)	Specific provision (Sec.103(2)
Organized Crime	Not specifically defined	Specifically defined (Sec.111)
Snatching	Treated as Theft (Sec. 379)	Separate, new offence (Sec.304)

5. Challenges and Future Outlook

- **Definition of "Community Service":** Lack of a precise definition in BNS leaves interpretation to the Magistrate.
- **Infrastructure Requirements:** The success of the "symphony" depends on having adequate digital infrastructure for e-trials, forensic labs, and manpower.
- **Training & Awareness:** Police, Lawyers, and the judiciary need extensive training to transition from the colonial mindset to a citizen-centric, restorative approach.

6. Conclusion:

The new criminal laws in India create a "symphony" by balancing strict, modern deterrence for serious crimes with compassionate, restorative justice for petty offences. By integrating technology, reducing pendency, and focusing on victims, the BNS, BNSS, and BSA aim to create a more efficient and fair criminal justice system, moving from *Dand* (punishment) to *Nyaya* (justice).

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Symphony between the constitutional safeguards as to ex post facto laws covered under Article 20(1) of the Constitution of India:-

Article 20(1) of the Indian Constitution provides a critical safeguard against *ex post facto* laws, ensuring no person is convicted for an act not illegal when committed, nor subjected to a greater penalty than what existed then. This provision harmonizes individual liberty with the rule of law, preventing arbitrary retroactive criminalization.

Key Aspects of Article 20(1):

- **Protection against Retrospective Criminalization:** An act deemed legal today cannot be made a crime tomorrow and punished retrospectively.
- **Protection against Enhanced Punishment:** If a law is passed after an offence, increasing the punishment, the accused will be tried under the old law, not the new, harsher one.
- **Scope:** This protection applies specifically to criminal convictions and penalties, not to civil liabilities or procedures.
- **Exceptions:** It does not apply to preventive detention or cases involving national security.

Symphony and Judicial Interpretation:

- **Beneficent Legislation:** The Hon'ble Supreme Court has clarified that *ex post facto* laws that reduce or soften the punishment are permissible, as they benefit the accused, noted in *Ratan Lal Vs. State of Punjab*.

- **Procedural Law:** Article 20(1) prohibits retroactive *substantive* law (creating crimes/penalties) but not changes in *procedural* law, meaning a change in trial method can be retroactive.
- **Key Case Law:** *Kedar Nath Vs. State of West Bengal* established that legislative acts creating new offences cannot have retroactive application.

Conclusion:

Article 20(1) strikes a balance, protecting the accused from the "brooding spirit of the times" or state vengeance, upholding fair trial principles, and fundamental liberty.

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Symphony between the rider contemplated under section 6 of the General Clauses Act, 1897:-

This paper presentation explores the legal synergy (symphony) between the **saving provisions under Section 6 of the General Clauses Act, 1897**, and the specific **riders (saving clauses or limiting provisions)** inserted into new, repealing legislation.

Presentation Title: The Symphony of Continuity: Rider Clauses and Section 6 of the General Clauses Act, 1897.

1. Introduction

When a new law repeals an old one, it potentially obliterates all rights, liabilities, and legal proceedings that existed under the old law. To prevent this legal chaos, two mechanisms exist:

1. **General Mechanism:** Section 6 of the General Clauses Act, 1897 (General Savings).
2. **Specific Mechanism:** A "Rider" (a specific saving clause within the new Act).

The "symphony" lies in how courts harmoniously interpret these two, ensuring that rights accrued are not lost, while still honouring the legislature's intent to update the law.

2. Section 6 of the General Clauses Act, 1897: The Statutory Default :

Section 6 provides that, unless a different intention appears, the repeal of a Central Act shall not:

- **Affect the previous operation** of the repealed enactment [Sec 6(b)].
- **Affect any right, privilege, obligation, or liability** acquired or accrued [Sec 6(c)].
- **Affect any penalty, forfeiture, or punishment** incurred [Sec 6(d)].
- **Affect any investigation, legal proceeding, or remedy** in respect of the above [Sec 6(e)].

Core Principle: Section 6 allows ongoing proceedings or investigations to continue as if the repeal had not occurred.

3. The "Rider" in Repealing Legislation

A "rider" is a provision in a new Act that acts as a caveat or a "saving clause" to the repeal. It defines what parts of the old law are saved.

- *Example:* "Notwithstanding the repeal of Act A, any action taken under the old Act shall continue…"

- **Purpose:** To explicitly clarify the scope of continuity, which might differ from the general protection offered by Section 6.

4. The Symphony: Interaction between Rider and Section 6

The relationship is not always straightforward. The key is finding the **"different intention"** mentioned in Section 6.

- **Complementary Relationship:** Usually, the rider strengthens Section 6. The rider may specify details (e.g., "pending cases in High Court are saved"), while Section 6 provides a default safety net for everything else.

- **Override Effect:** If the rider expresses a *contrary intention* (e.g., "All pending proceedings under the old Act shall abate"), it overrides the general protection of Section 6.

- **Harmonious Construction:** Courts attempt to read the rider in conjunction with Section 6. If a specific right is not protected by the rider, courts might still use Section 6 to protect it, provided the rider does not explicitly negate that protection.

5. Key Judicial Principles:

- **"Previous Operation":** Section 6 only protects rights that have already "accrued" or liabilities that have been "incurred." It does not protect inchoate rights or mere chances of a right.

- **"Unless Different Intention Appears":** This is the phrase that allows the rider to dominate. If a new Act says, "Repeal includes everything," then Section 6 does not apply.

- **Repeal Vs. Omission:** Section 6 technically applies to "repeals." However, modern Hon'ble Supreme Court rulings suggest that if a rule is "omitted" (as in tax laws) but the result is the same as a repeal, Section 6 principles still apply.

6. Conclusion:

The symphony between the rider and Section 6 of the General Clauses Act is a cornerstone of statutory interpretation in India.

1. **Section 6** acts as the *guardian*, ensuring that the repeal of a law does not cause chaos by nullifying past actions.

2. **The Rider** acts as the *specific, tailored instruction* of the legislature.

When they act in harmony, they ensure legal certainty, protecting individuals' accrued rights while enabling the state to bring in new, updated legislation.