

Interplay between the Indian Penal Code and the Bharatiya Nyaya Sanhita with special focus on the new offences created and offences deleted under statute book

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1. Introduction:

Criminal law plays a central role in maintaining public order and protecting the rights of individuals within a society. In India, the primary substantive criminal law for over a century and a half was the Indian Penal Code, 1860. It was drafted under the leadership of Thomas Babington Macaulay and came into force on 1st January 1862. IPC created a systematic framework defining offences and prescribing punishments. Although the IPC was widely admired for its clarity and structure, it have the British colonial roots, as it was a product of the colonial era. After India gained independence and adopted a democratic Constitution, several provisions of the IPC became inconsistent with constitutional values and modern social realities. Further, the Indian Penal Code became outdated and struggled to address newly emerging forms of crime, necessitating the introduction of updated criminal legislation. In order to modernize the criminal justice system, the Indian Parliament enacted the Bharatiya Nyaya Sanhita, 2023.

2. Historical Development of the Indian Penal Code

(a) Before the enactment of the IPC, criminal law in India was fragmented. Different regions followed a mixture of Hindu law, Islamic law, and regulations issued by the East India Company. In order to bring uniformity, the the Imperial Legislative Council, the then legislature of British India enacted Indian Penal Code. It consisted of 511 sections arranged in a systematic manner covering offences such as:

- offences against the state
- offences against the human body
- property offences
- offences relating to public tranquillity

(b) The code soon became the backbone of criminal law in India and was adopted with minor modifications in several other jurisdictions. Despite its strengths, the IPC gradually became partly outdated due to the emergence of new forms of crime and evolving constitutional principles.

3. Need for the new enactment in place of IPC:

(a) Colonial Legacy: Many provisions of the IPC such as sedition, Unlawful assembly and waging war against government were incorporated in IPC to curb the freedom movements from colonial rule in India.

(b) Outdated Offences: criminal law is dynamic. It mirrors the evolving moral, social and constitutional values of society. Conduct once condemned as criminal may later be tolerated or protected. In the way same way, the offences such as adultery, same sex relations are considered as criminal in the year 1860, but today, moral perception and constitutional values changed and considered them as not crime today.

(c) Emergence of New Crimes:

(i) The nature of crime has evolved significantly with changes in society, technology, and economic systems. When the Indian Penal Code, 1860 was enacted, it primarily addressed traditional offences such as murder, theft, and assault that existed in the nineteenth century. However, modern developments such as the internet, digital finance, and global communication have given rise to new forms of criminal activity that were unimaginable at that time. Offences like cybercrime, hacking, online fraud, identity theft, cyber stalking, and technologically facilitated terrorism have emerged due to rapid technological advancement and digitalization.

(ii) Although some gaps were partially filled through special legislations like the Information Technology Act, 2000 and anti-terror laws, the need for a comprehensive modernization of the criminal law framework became evident. This changing nature of crime and societal needs ultimately led to the replacement of the IPC with the Bharatiya Nyaya Sanhita, 2023, which aims to reflect contemporary realities and provide a more updated criminal justice framework.

(d) Constitutional Developments:

The constitutional transformation of India after independence played a significant role in the evolution of modern criminal law and eventually led to the enactment of the Bharatiya Nyaya Sanhita, 2023. The Indian Penal Code, 1860 was enacted during the colonial period and reflected the priorities of the British administration rather than the constitutional values of an independent democratic republic. After the adoption of the Constitution of India, criminal law began to be interpreted and shaped in accordance with fundamental rights such as equality, liberty, and dignity. Constitutional developments and judicial interpretations gradually exposed several colonial provisions of the IPC as inconsistent with modern constitutional morality. Over time, courts and legislatures recognized the need to align criminal law with constitutional principles, democratic values, and contemporary social realities. This constitutional evolution, combined with the need to modernize criminal law, ultimately resulted in the replacement of the IPC with the Bharatiya Nyaya Sanhita, 2023, which aims to create a criminal justice framework more consistent with the constitutional ethos of independent India.

4. Structure of the Bharatiya Nyaya Sanhita:

The Bharatiya Nyaya Sanhita contains 358 sections, fewer than the IPC due to consolidation and simplification of several provisions. Its structure largely follows the systematic arrangement of offences found in the IPC, but it reorganizes and modernizes several provisions to reflect contemporary needs. The BNS is divided into 20 Chapters containing 358 Sections, which classify offences according to their nature and seriousness.

5. Newly Introduced Offences under the BNS:

(a) Sexual Intercourse By Employing Deceitful Means, etc.:

BNS introduces sexual intercourse by employing deceitful means, etc as offence. Section 69 states that whoever, by deceitful means or by making promise to marry to a

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

(b) Organised Crime:

(i) The new law has added organised crime under Section 111, and if the crime results in the death of any person, maximum prescribed punishment is death penalty.

(ii) The organised crime is defined 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 organised crime.” It also defines organised crime syndicate, continuing unlawful activity, economic offence.

(iii) The punishment Prescribed For Committing Organised Crime is that, If such offence has resulted in the death of any person, be punished with death or imprisonment for life, and shall also be liable to fine which shall not be less than ten lakh rupees 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 to fine which shall not be less than five lakh rupees.

(iii) The punishment for being a member of an organised Crime Syndicate is that if any person who is a member of an organised crime syndicate will be punished with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and can also be liable to fine which will not be less than five lakh rupees

(c) Petty Organised Crime: BNS has also added Petty Organised Crime under Section 112, which states that 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. Punishment prescribed

for committing any petty organised crime is 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.

(d) Terrorist Act:

(i) A major development brought about by the criminal law amendment is the addition of the "Terrorist Act," which did not find a place in the IPC. The wider definition of the offence of "terrorist act" is given, compared to the initial version of the bill introduced in August. It says that, Acts done with the intent of threatening or likely to threaten the "economic security of India", which cause or likely to cause damage to the monetary stability of India by way of production or smuggling or circulation of counterfeit Indian paper currency, coin or of any other material" are also brought under the ambit of "terrorist act".

(ii) Besides, acts threatening or likely to threaten the unity, integrity, sovereignty, security of the country or striking terror in the minds of people are also covered under the offence. These acts include death or damages to properties caused by use of bombs, explosives, firearms, or other lethal weapons or poisonous or noxious gases or other chemicals or by any other substance (whether biological, radioactive, nuclear or otherwise) of a hazardous nature.

(iii) The offence is punishable with death, or imprisonment for life. Those who conspire or attempt to abet or incite such action, or knowingly facilitate the commission of a terrorist act, could face imprisonment of not less than five years, extendable to life sentence.

(e) Act Endangering Sovereignty, Unity and Integrity of India:

(i) BNS penalises acts endangering the unity and integrity of India, while sedition criminalised acts against the government, the BNS replaces the "government" with the "country".

(ii) Aspects of Sedition have been retained under Section 152 under the new BNS, which states that whoever, purposely or knowingly, by words, either spoken or written, or by signs, or by visible representation, or by electronic communication or by use of financial mean, or otherwise, excites or attempts to excite, secession or armed rebellion or subversive activities, or encourages feelings of separatist activities or endangers sovereignty or unity and integrity of India; or indulges in or commits any such act shall be punished with imprisonment for life or with imprisonment which may extend to seven years, and shall also be liable to fine.

(iii) Comments expressing disapprobation of the measures, or administrative or other action of the Government, with a view to obtain their alteration by lawful means will not be an offence under this provision.

(f) Mob Lynching:

'Mob lynching' has been made a separate offence under section 109 of the BNS, with a maximum punishment of death penalty. Section 109 of BNS reads as follows:

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

(g) Medical Negligence:

(i) Under Section 304A of the IPC, causing death by negligence is punishable with imprisonment up to 2 years, or a fine, or with both. There is no separate classification for doctors in Section 304A IPC.

(ii) The new BNS under Section 106, has carved out a special classification for doctors in relation to the punishment for causing death by medical negligence. While the Sanhita enhances the punishment for causing death by negligence to imprisonment up to 5 years, if such death is caused by a doctor, then the punishment is imprisonment up to 2 years.

(h) Hit and Run Cases:

Section 106(2) BNS introduced the new offence of hit and run cases, which was not there in IPC. BNS prescribes stringent punishment for 'hit and run' cases. If a driver causes the death of a person by rash and negligent driving and “escapes without reporting it to a police officer or a Magistrate soon after the incident, shall be punished with imprisonment of either description of a term which may extend to ten years, and shall also be liable to fine.” However, said provision was not yet came into force.

(i) Introduced Snatching as a Distinct Offence:

BNS introduced new offence of snatching, which was earlier considered under the scope of theft in section 379 of IPC. Section 304 of BNS states that theft is snatching if, in order to commit theft, the offender suddenly or quickly or forcibly seizes or secures or grabs or takes away from any person or from his possession any movable property. Snatching is punishable with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

6. offences omitted in BNS

(a) Attempt to Suicide is no Longer An Offence:

(i) Section 309 of IPC deals with punishment for attempt to commit suicide. Hon'ble Supreme Court of India in **Common Cause (A registered society) v. Union of India and Anr. (2018)** had recommended the Parliament to consider decriminalizing attempt to suicide, saying the provision had become anachronistic while giving guidelines to passive euthanasia.

(ii) Further section 115 of the Mental Healthcare Act, 2017 decriminalize the attempt to commit suicide and made it clear that a person who attempts to commit suicide will be presumed to be "suffering from severe stress" and shall not be subjected to any investigation or prosecution.

(iii) Section 309 of the IPC enforced punishment for an attempt to commit suicide, this stringent provision did not find a place under BNS and has been completely deleted. However, Section 226 of BNS criminalises the attempt to commit suicide to compel or restrain the exercise of lawful power, punishable with simple imprisonment for a term that may extend to one year, or with a fine, or with both, or with community service.

(b) Unnatural Intercourse Against Men or Bestiality No Longer Offences Under BNS:

(i) Section 377 of IPC provides punishment for unnatural offences. It is pertinent to note that in landmark ruling of Apex Court in Navtej Singh Johar, where a bench of five judges of the Supreme Court partially struck down Section 377 IPC, which criminalised consensual carnal intercourse, however forced intercourse with an adult male is an offence, and also bestiality.

(ii) The BNS has completely deleted the offence, implying that forcible carnal intercourse against a man and bestiality are no longer offences under BNS.

(c) Offence Of Adultery Omitted:

In view of Apex Court's judgement in Joseph Shine's case the offence of Adultery under section 497 of IPC has been deleted, however, 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.

7. Other significant changes in BNS:

(a) Transgender Included In Definition Of Gender:

Section 10 of BNS defines “gender” which states that the pronoun “he” and its derivatives are used of any person, whether male, female or transgender. It explains that “transgender” shall have the meaning assigned to it in clause (k) of section 2 of the Transgender Persons (Protection of Rights) Act, 2019.

(b) Enhanced Punishment in case of Gang Rape of Victim of under 18 Years of Age:

As per Section 70, where a woman under eighteen years of age is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and with fine, or with death. It is pertinent to note that, under Section 376DA IPC, the enhanced punishment was prescribed for the victim under sixteen years of age.

(c) Marital Rape with minor wife is offence:

As per exception of Rape which is Section 63 of BNS, sexual intercourse or sexual acts by a man with his own wife, where the wife is not under eighteen years of age, would not be rape. However, under IPC, the age of wife to not constitute rape was “fifteen years”. In 2017, the Supreme Court in the judgment *Independent Thought v. Union of India*, (2017) 10 SCC 800 had read 'fifteen years' in Exception 2 to Section 375 IPC as '18 years' so as to bring sex with a minor wife within the ambit of the rape offence.

(d) Offences against Woman and Child were brought under one chapter:

The new BNS adds Chapter V naming “Of Offences Against Woman and Child Of Sexual Offences”. All the offences relating to woman and child have been placed under one chapter in the beginning of the Code, which was earlier spread under various chapters and parts.

(e) Community Service as form of Punishment:

Community service has been introduced as a form of punishment under Section 4, although it has not been defined what community service entails. For offences such as attempting suicide to compel or restrain the exercise of lawful power, defamation, misconduct in public by a drunken person, and failure to appear at the specified place and time as required by a proclamation published under sub-section (1) of section 84 of the BNS, 2023, community service can be awarded in addition to the prescribed punishment.

(f) Significant Increase in Fine:

The Bharatiya Nyaya Sanhita, 2023 (BNS) has substantially increased fines for several offences compared to the earlier Indian Penal Code, 1860 (IPC). The increase aims to adjust penalties to modern economic realities and strengthen deterrence. Below is a comparative table of major offences where fines have been increased.

Sl. No	Offence	IPC Section & Fine	BNS Section & Fine
1	Public servant unlawfully engaging in trade	Section 168 Fine up to ₹1,000	Section 198 Fine up to ₹10,000
2	Disobedience to order duly promulgated by public servant	Section 188 Fine up to ₹1,000 (₹200 for simple case)	Section 223 Fine up to ₹5,000 / ₹10,000
3	Giving false evidence	Section 193 Fine discretionary (generally low)	Section 229 Fine up to ₹5,000 / ₹10,000
4	False information to public servant	Section 182 Fine up to ₹1,000	Section 217 Fine up to ₹5,000
5	False personation for purpose of act	Section 205 Fine up to ₹1,000	Section 236 Fine up to ₹10,000
6	Negligent conduct with respect to fire or combustible matter	Section 285 Fine up to ₹1,000	Section 285 Fine up to ₹5,000
7	Negligent conduct with respect to machinery	Section 287 Fine up to ₹1,000	Section 289 Fine up to ₹5,000
8	Negligent conduct with respect to animals	Section 289 Fine up to ₹1,000	Section 291 Fine up to ₹5,000
9	Causing public nuisance	Section 290 Fine up to ₹200	Section 292 Fine up to ₹1,000
10	Misconduct in public by drunken person	Section 510 Fine up to ₹10	Section 355 Fine up to ₹1,000
11	Rash driving	Section 279 Fine up to ₹1,000	Section 281 Fine up to ₹5,000
12	Rash act endangering	Section 336	Section 125

life or personal safety

Fine up to ₹250

Fine up to ₹2,500

THANK YOU