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BHARATIYA NYAY SANHITA BILL, 2023: IMPLICATIONS FOR ACCESS TO JUSTICE IN INDIA

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ABSTRACT

Bharatiya Nyay Sanhita Bill, 2023 was introduced to levy major changes being proposed by Lok Sabha on August 11 2023 regarding the offences existing in Indian Penal Code, 1860. Nonetheless, there is a lot to take into account in the sections where major adjustments have been made. It is necessary to evaluate the significant effects of adding new offenses, importing offenses from other laws with minor alterations, and eliminating IPC offenses. Alterations includes the increase of punishments for some current offenses, offenses related to organized crime and terrorism, and the imposition of community service as a penalty for some minor infractions are among the changes.

KEYWORDS: *Eliminating, Imposition, Evaluate, Alterations.*

1. INTRODUCTION

Three new legislations were tabled by the Center in the Lok Sabha on August 11, 2023, calling for a significant overhaul of the country's criminal justice framework. The three laws are anticipated to supersede the Indian Evidence Act of 1872, the Indian Penal Code of 1860, and the Code of Criminal Procedure of 1973.

The Indian Penal Code (IPC), which the British put into effect in 1860, has served as the cornerstone of the Indian system of criminal justice. In 2023, the Bharatiya Nyaya Sanhita is expected to take root and is set to replace the Indian Penal Code.

2. BACKGROUND

In the year 2020, the Ministry of Home Affairs established a committee headed by Dr. Ranbir Singh, a former vice chancellor of Delhi's National Law University (NLU), to examine the three criminal statutes. The panel set out to draft amendments to the penal code that would protect the nation's core values of fairness, honor, and the intrinsic value of every person while also ensuring the security and privacy of each person, society as a whole, and the country as a whole. In February, the commission offered its recommendations for modifications to the penal law.¹

3. MAIN ELEMENTS OF THE BHARATIYA NYAY SANHITA BILL, 2023

The Bharatiya Nyaya Sanhita is aimed at replacing the existing Indian Penal Code. The main elements of the code following an analysis are as follows:

- Sedition is outlawed, a crime that was harshly condemned for being a legacy from colonial times that restricted debate and criticism;
- It mandates a 10-year prison sentence for having intercourse with a woman while faking marriage, which is a prevalent method of trickery and exploitation;
- For mob lynching's, which have recently become a major issue, the death penalty is the maximum penalty;

¹ Available at: <https://www.thehindu.com/opinion/op-ed/the-bharatiya-nyaya-sanhita-needs-a-relook/article67299625.ece> [Last Accessed on 4th November 2023.]

- The law covers acts of terrorism in addition to offenses that were previously subject to separate legal standards, such as subverting national sovereignty, armed uprising against the government, and separatist;
- The proposal can expedite court processes and prevent lengthy delays by imposing a maximum deadline of 180 days for filing a charge sheet;
- The law creates community service as a type of punishment for particular transgressions, which can help with the rehabilitation of convicts and reduce jail overcrowding.

The Bharatiya Nyay Sanhita Bill, 2023 has omitted the subsequent provisions from the Indian Penal Code, 1860 which are Section 14, Section 18, Section 18, Section 29A, Section 50, Section 53A, Section 124A, Section 153AA, Section 254, Section 264 to 267, Section 309, Section 310 to 311, Section 376DA & 376DB, Section 377, Section 444, Section 446, Section 497.

4. SIGNIFICANCE OF THE BILL

The Bharatiya Nyay Sanhita Bill, 2023 seeks to replace the Indian Penal Code (IPC) by removing 22 Sections. It also proposes significant amendments to 175 existing provisions and the addition of eight fresh ones. There are 356 clauses in all in this Act.

The newly added laws are:

- Section 109 on organized criminality;
- Section 110 on minor organized crime;
- Section 111 on offenses involving terrorist acts;
- Section 150 on acts harming India's sovereignty, unity, and integrity.
- Section 302 on snatching;
- Provision 124-A of the Indian Penal Code (IPC) imposes a sentence of three years in jail or life in prison for the crime of sedition, as well as a potential fine. Acts that jeopardize the unity, honesty, and sovereignty of India are covered by Section 150 of the said Bill;
- For the first time since the IPC's adoption, the term "terrorism" has a definition in the BNS Bill. Any action taken, domestically or internationally, with the intent to threaten India's security, unity, and integrity, to intimidate the public in general or a particular group, or to disturb the status quo is considered terrorism. Under the BNS Bill, defamation is now punishable by a straightforward term of up to two years in prison, a fine, both, or community service;

- The death penalty is now a potential punishment for the first time for mob lynching crimes, in addition to the previous punishments of seven years or life in prison;
- The offense of sexually abusing women on false pretences of marriage, work, advancement, or by concealing their real identities;
- The amended Bill does not include a clause regarding adultery as a crime. This is in line with the Supreme Court's 2018 ruling in *Joseph Shine*², which ruled that the provisions of section 497 of the IPC—which criminalized adultery—was unconstitutional.
- The new Bill exempts "unnatural sexual offenses against men" from punishment. This is in line with the unanimous ruling of the Supreme Court in the *Navtej Singh* case³, which invalidated Section 377 of the IPC since it prohibited relationships of same gender between adults who consented.
- A number of petitions challenging the validity of Section 375 of the IPC's Exception 2, which exempts non-consensual marital intercourse from the charge of rape, are presently being considered by the Supreme Court.;
- However, the clause that makes marital rape permissible has been kept. Exception 2 to Section 63 (which defines the crime of rape) stipulates those sexual relations or activities performed by a man with his own wife, if the wife is not under the age of eighteen, are not considered rape;⁴
- Although section 302 of the IPC governs the punishment for the crime of murder, it has been replaced by provision 101 of the BNS Bill;
- The life sentence or death penalty for murder continues to be the punishment;
- A charge-sheet must be filed within 90 days, and the court may grant a further 90 days, per the proposed Bill's requirements for a swift legal process. The probe must be finished and sent to trial in 180 days. After the trial, a decision must be made within 30 days;

² *Joseph Shine v. Union of India*, AIR 2018 SC 1676.

³ *Navtej Singh Johar v. Union of India* (2018), AIR 2018 SC 4321.

⁴ Available at: <https://www.indiatvnews.com/news/india/amit-shah-need-to-replace-ipc-new-legislations-bharatiya-nyaya-sanhita-parliament-home-ministry-latest-updates-2023-10-07-896687> [last Accessed on 4th November 4, 2023]

- Life imprisonment or twenty years in cell will now be the maximum penalties for all forms of gang rape. The death sentence will be used as part of the penalty for raping a minor. Additionally, a number of offenses have become gender neutral.⁵

5. CONCLUSION

The Bharatiya Nyay Sanhita Bill, 2023, is a new bill that updates the IPC law. Its introduction shows that attempts are being made to adapt India's legal system to the changing nature of crime and technology. Adequate training, continuous monitoring, and proper execution of the improvements are essential. They might improve the effectiveness of the legal system and strengthen the defence of people's rights. Together, society at large, legal professionals, law enforcement organizations, and legislators must make sure that the updated legal structure accomplishes its objectives without compromising core ideas of justice and equity.

⁵ Available at: <https://theleaflet.in/the-three-new-criminal-law-bills-missed-opportunities-and-misplaced-priorities/> [Last Accessed on 4th November 2023.]