

FROM BILL TO LAW: DECODING THE LATEST CRIMINAL JUSTICE REFORMS

1. INTRODUCTION

On August 11, 2023, the Bharatiya Nyaya Sanhita Bill, 2023, Bharatiya Nagarik Suraksha Sanhita Bill, 2023 and the Bharatiya Sakshya Bill, 2023 were introduced in the Lok Sabha that sought to repeal and replace the Indian Penal Code, 1860 (“IPC”), Code of Criminal Procedure, 1973 (“CrPC”), and the Indian Evidence Act, 1872 (“Evidence Act”), respectively. However, on December 12, 2023, these bills were withdrawn from consideration and subsequently, reintroduced with minor changes under new titles: Bharatiya Nyaya (Second) Sanhita Bill, 2023; Bharatiya Nagarik Suraksha (Second) Sanhita Bill, 2023; and Bharatiya Sakshya (Second) Bill, 2023. Thereafter, the bills were passed by the Lok Sabha on December 20, 2023, and by the Rajya Sabha on December 21, 2023. The bills received Presidential assent on December 25, 2023, and thereby gave rise to Bharatiya Nyaya Sanhita, 2023 (“BNS”); Bharatiya Nagarik Suraksha Sanhita, 2023 (“BNSS”); and Bharatiya Sakshya Adhinyam, 2023 (“BSA”). Pertinently, while these aforesaid acts have received assent from the President of India, they are yet to be notified and thus, have not yet been brought into effect. Therefore, till the notification of the date of enforcement of the aforesaid acts, the old laws shall continue to operate.

The overarching objective behind the newly-enacted criminal reforms is to depart from the colonial legacy of the criminal justice system, emphasizing a shift towards justice-oriented principles that prioritize the protection of rights of the Indian citizens. This transformative legislative endeavor aims to not only consolidate and streamline the existing criminal provisions, but also introduces new offenses, particularly in the realms of hate speech, terrorism, and acts impacting the nation’s sovereignty, unity, and integrity. Some of the significant amendments in the criminal procedural law include provisions addressing the timelines for investigations and trials, along with the introduction of trial *in absentia* against absconders. The procedural reforms also lay special emphasis on the integration of technology in the judicial process. This article embarks on an analysis of the newly enacted criminal reforms.

2. BHARATIYA NYAYA SANHITA, 2023

In a significant step toward changing India’s criminal legal landscape, the BNS brings a transformation in how justice will be delivered, aiming for better efficiency, transparency, and access for everyone, while making it better suited to people’s needs and in line with the demands of today’s world. Some of the key transformative changes brought about through the BNS have been discussed below:

➤ Offences against women and children

- While the core content addressing sexual offenses in the BNS closely resembles the IPC, there are certain modifications. The BNS introduces a new chapter named ‘Offences Against Woman and Child’, specifically for punishment of sexual offenses. In contrast, such offenses were punishable under the chapter ‘Offences Affecting the Human Body’ of the IPC. This restructuring implies

that the BNS acknowledges sexual offenses, only when they are perpetrated against women and children.

- A significant change introduced by the BNS is, the age of consent within the definition of rape (Section 63 of the BNS/section 375 of the IPC) with an increase from 15 (fifteen) to 18 (eighteen) years for married women.
- Section 69 of the BNS introduces a new offence of deceitful sexual intercourse. This offence was previously not included in the IPC and encompasses instances where sexual activity happens through deceptive methods. The Explanation accompanying this provision specifies that 'deceptive methods' cover scenarios such as falsely promising a job or promotion, enticing someone into marriage by concealing one's true identity etc. However, unlike other sections in this chapter, there is no minimum punishment under this section. However, the maximum punishment prescribed under the Section is 10 (ten) years of imprisonment.

➤ **Organised crime**

- Sections 111 and 112 of the BNS establish 'organised crime' as a nationwide offense for the first time under any Indian law. Previously, certain states had addressed 'organised crime' through laws, such as Maharashtra Control of Organised Crime Act, 1999, Uttar Pradesh Control of Goondas Act, 1970 etc., passed by various state legislatures. Section 111 of the BNS defines organised crime as a continuous unlawful activity carried out by individuals or groups, involving violence, coercion, or corruption to gain material benefits. It also lists specific unlawful activities including kidnapping, robbery, cyber-crimes, trafficking, economic offence, etc.
- Section 112 of the BNS penalizes common forms of organised crime causing public insecurity, labeling them as 'petty organized crime' and includes offenses such as theft, illegal ticket selling, public examination question paper sales etc.
- Further, the definition of "economic offence" under Explanation (iii) of Section 111(1) includes criminal breach of trust, forgery, counterfeiting of currency notes, bank notes and government stamps, etc. It also includes doing any act with a view to defraud any bank or financial institution or any other institution or organization for obtaining monetary benefits in any form.

➤ **Acts endangering sovereignty, unity and integrity of India**

- Section 152 criminalizes acts that endanger India's sovereignty, unity, and integrity. It imposes penalties ranging from imprisonment of 7 (seven) years plus a fine, to a maximum of life imprisonment. Pertinently, the minimum punishment for the offense has been increased from three to seven years of imprisonment. While not explicitly labeled as 'sedition,' this section mirrors the essence of Section 124A of the IPC, and potentially encompasses a broader spectrum of ambiguous and vague acts as compared to the aforesaid section of the IPC.
- While Section 152 maintains the modes of committing sedition – namely, through 'words' or 'visible representation' – it alters the prohibited actions. Under the IPC, Section 124A criminalizes efforts to incite 'hatred, contempt, or disaffection towards the Government established by law'. However, the BNS criminalizes endeavors to incite 'secession, armed rebellion, subversive activities,' or the promotion of 'separatist sentiments' or 'endangering India's sovereignty, unity, or integrity'. Beyond changing the focus from the 'government of India' to 'India', in Section 152 and expanding the activities threatening the country's 'unity and integrity,' the new provision

also introduces new modes of committing the offense, including ‘electronic communication’ and ‘financial means.’ Additionally, it includes a *mens rea* requirement, specifying that the act must be done ‘purposely or knowingly’.

➤ **Criminal conspiracy**

- The BNS has also introduced the phrase ‘*with the common object*’ while defining ‘criminal conspiracy’ under Section 61(1) of the BNS. Prior to this, Section 120A and Section 120B of the IPC, which defined ‘criminal conspiracy’, did not require “common intention/common object” as an essential requirement to constitute the offence of criminal conspiracy.

➤ **Enhanced punishment for criminal breach of trust**

- While the earlier punishment for criminal breach of trust (Section 406 of the IPC) was a maximum imprisonment of 3 (three) years or fine or both, now Section 316(2) of the BNS enhances the maximum period of imprisonment to 5 (five) years or fine or both.

3. **BHARATIYA NAGARIK SURAKSHA SANHITA, 2023**

The BNSS, as per its statement of objects and reasons, seeks to realise the aspiration of accessible and speedy justice to all, by adopting a “citizens centric” approach in undertaking a comprehensive review of criminal procedural law. The BNSS proposes (i) the use of technology and forensic sciences in investigations, (ii) providing regular updates regarding the progress of investigation to the victims and (iii) streamlines the various timelines for time-bound investigation, trial and pronouncement of judgments. Some of the important changes have been discussed below:

➤ **Integration of technology in criminal procedure**

- Section 2(1)(a) of the BNSS defines audio-video electronic means (“AV”) and provides for the use of AV at various stages of the criminal investigation and trial. For instance, Section 105 of the BNSS provides that the search and seizure under Chapter VII shall be recorded through AV.
- Similarly, AV has been allowed for recording statements prepared based on examination of witnesses by the police (Section 180), recording of confessions or statements (Section 183), recording of search by a police officer (Section 185), reading out of charges to the accused (Section 251), evidence of a witness (Section 254, 265 and 266), hearing on discharge of accused (Section 262), recording of evidence (Section 308, 310), etc. Further, Section 530 of the BNSS provides that all trials, inquiries and proceedings under the BNSS may be held *via* video conferencing.
- Thus, the BNSS provides for robust and comprehensive usage of technology and leverages the advancement of technological development in the legal arena, since the Covid-19 pandemic.

➤ **Introduction of timelines under the BNSS**

The BNSS also seeks to introduce various timelines to ensure time-bound, investigation, trial and pronouncement of judgments. Some of the important changes are mentioned below:¹

- **Initiation of Criminal Proceedings**
 - **Section 173(1)** → Recording of FIR if information relates to commission of a cognizable offence, in case of electronic communication → **within 3 (three days)**.
 - **Section 173(3)** → Preliminary Inquiry by Police to ascertain commission of a cognizable offence punishable between 3 (three) years to 7 (seven) years → **within 14 (fourteen) days**.
- **Arrest & Investigation**
 - **Section 40** → Arrest by Private Person to be entrusted to police station → **within 6 (six) hours**.
 - **Section 193(3)(ii)** → Information on status of investigation to victims/ informants → **within 90 (ninety) days**.
 - **Section 193(9)** → Further investigation during trial (post-filing of chargesheet), subject to court's permission → shall be completed **within 90 (ninety) days**.
 - **Section 230** → Supply of copies of police report, FIR, etc. to accused and victim → **within 14 (fourteen) days of production or appearance of accused**.
- **Trial and judgment**
 - **Section 330(1)** → Procedure for admission and denial of genuineness of documents by the defence and prosecution → **Within 30 (thirty) days of such supply of document**, subject to further relaxation by the court.
 - **Section 392(1)** → Pronouncement of judgment in any criminal court → **within 45 (forty-five) days, after termination of trial**.
 - **Section 258(1)** → Pronouncement of Judgment by Court of Sessions → **within 30 (thirty) days from the date of completion of arguments** [extendable to a period of 45 (forty-five) days, for reasons recorded in writing].

➤ **Custody of arrested persons during investigation**

- While the BNSS retains the concept of default bail and the overall timeline of custody, Section 187(2) provides that detention in custody of 15 (fifteen) days (in whole or in part) can be at any time during the initial period as prescribed under section 187(3) of the BNSS. The omission of the phrase "*otherwise than in police custody*" implies that police custody can also be provided beyond the period of 15 (fifteen) days.

¹ Please note that that this list exclusively includes some of the major additions of timelines, and various other stages of inquiry, investigation, and additional phases of criminal proceedings have been modified or introduced. However, for the sake of brevity, these additional changes have not been incorporated into this update.

➤ **Provisions pertaining to bail and bonds**

- Other than introducing definitions for the terms (i) bail, (ii) bond and (iii) bail bond, the BNSS, by way of introducing Section 479(1), reduces the maximum period of detention for undertrial prisoners, who are first-time offenders i.e. those who have never been convicted of any offence in the past, to 1/3 (one-third) of the maximum period of imprisonment that is specified for such offence. However, the aforementioned benefit given under Section 479 has been restricted to exclude (i) persons accused of committing any offence attracting life imprisonment [Section 479(1) of the BNSS] or (ii) in such cases where investigations are underway in multiple offences or multiple cases are pending against a person [Section 479(2) of the BNSS].
- Section 482 of the BNSS deals with anticipatory bail and removes the guidelines previously incorporated under Section 438(1) of CrPC, which provides instructive guidelines for courts, in determining the factors to be considered when deciding the grant of anticipatory bail.

➤ **Proclamation and attachment of property abroad**

- The BNSS also introduces Section 86, which confers the court with the power to initiate the process of requesting assistance from a court or an authority in a contracting State for identification, attachment and forfeiture of property belonging to a proclaimed person. The intention of this addition appears to target and address a situation wherein a proclaimed person's property is situated outside India.

➤ **Proclaimed offenders and trials *in absentia***

- The BNSS also entails provisions for conducting trials *in absentia*, for proclaimed offenders. As per the scheme under the CrPC, if a court had reasons to believe that an accused person is intentionally evading summons, warrants, notices, etc, it had the power to issue a proclamation notice and direct such accused person to appear at a stipulated time and place. However, if the accused person failed to appear as per such proclamation notice, and they were accused of any of the offences listed under Section 82(4) of the CrPC, then the court may declare them as "proclaimed offender". While Section 82(4) of the CrPC listed specified offences where such provision is applicable, Section 84(4) of the BNSS seeks to replace it with a threshold based on the nature of punishment i.e. 10 (ten) years imprisonment or more, life imprisonment or death. The rest of Section 84 of the BNSS has largely retained the essence of Section 82 of the CrPC.
- Section 356(1) of the BNSS is a new insertion which provides for trials *in absentia* for proclaimed offenders wherein if a person is declared to be a proclaimed offender (who has absconded to evade trial and there is no immediate prospect of arresting such person), it shall be deemed to operate as a waiver for such person's right to be present and tried in person. The Proviso to this Section states that the trial may only commence after a period of 90 (ninety) days from the date of framing of charges.

➤ **Introduction of community service as a punishment**

- The BNSS introduces community service as one of the punishments, to encourage a more reparative approach to minor crimes. Community service has been defined in the Explanation to Section 23 of the BNSS as "the work which the Court may order a convict to perform as a

form of punishment that benefits the community, for which he shall not be entitled to any remuneration”.

➤ **Use of Handcuffs while making arrests**

- Section 43 of the BNSS empowers a police officer to use handcuffs while arresting a person or while producing such person before the court, who is a habitual or repeat offender, or who escaped from custody and in the alternative, lists down a range of offences where such usage of handcuffs is permitted.
- It is noteworthy that the different conditions are separated with the usage of “or”, thereby indicating that these are disjunctive requirements and satisfying any of the requirements is sufficient to confer such discretionary power upon police officers.

4. **BHARATIYA SAKSHYA ADHINIYAM, 2023**

While the BNS and the BNSS entail extensive revisions, the BSA focuses on a singular, yet impactful, modification – emphasizing the evidentiary status of electronic evidence. The following substantial changes have been undertaken in the BSA:

➤ **Admissibility of electronic evidence:**

- Section 2(1)(d) of the BSA defines ‘documents’ to include ‘electronic or digital records’. Similar corresponding changes have also been incorporated in the definition of ‘evidence’ under Section 2(1)(e) of the BSA.
- Consequently, Section 57 of the BSA includes ‘electronic or digital records’ within the meaning of primary evidence. This is evident from the insertion of Explanation 4 to Explanation 7 to the said provision. This indicates that the distinction between original versions of evidence and copies of the electronic records, has been eliminated to the extent that both are accorded the status of primary evidence.
- Section 62 of the BSA entails that electronic records must be proved as primary evidence in accordance with Section 63 of the BSA. Section 61 is a newly introduced provision which states that the admissibility of electronic records cannot be denied, merely on the ground that it is an electronic or digital record. Section 61 further clarifies that subject to Section 63, such records shall have the same legal effect, validity and enforceability as paper records.
- Further, Section 63 extensively deals with the admissibility of electronic records. Specifically, Section 63(4) details the stage at which the certificate regarding the electronic record must be submitted.

➤ **Definition of secondary evidence**

- Section 58 of the BSA defines secondary evidence and expands it to also include (i) oral admissions, (ii) written admissions, and (iii) the testimony of a person who has examined the document and is skilled in the examination of documents.

➤ **Joint trials**

- The BSA incorporates an explanation to joint trials under Section 24. The aforesaid Section states that where multiple persons are tried jointly for the same offence, and a confession made by one such person, affecting himself and some other person is proven, the court is empowered to consider such confession not only against the person who makes such confession, but also against such other person.
- The Explanation (II) to this section, states that such joint trial shall also be applicable in the absence of the accused who has absconded or failed to comply with a proclamation issued under Section 84 of the BNSS.

➤ **Judicial notice of extra-territorial jurisdiction**

- Section 52(1)(b) of the BNSS provides that the court is mandated to take judicial notice of international treaties, agreements, or conventions between India and any other country, as well as decisions made by India at international forums.

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