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Indian penal code & bharatiya nyaya sanhita bill, 2023: A comparative study

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Abstract: The Indian Penal Code has been criticized for being outdated and for not reflecting the realities of modern India. As a result, there have been calls for it to be amended to address these new challenges.In a significant step towards the modernization of India's Criminal Justice System, the Bhartiya Nyaya Sanhita (BNS) Act, 2023 has been enacted to replaceoutdated law dating back to the colonial era. Formulated with a steady focus on the sad state of victims, the Bhartiya Nyaya Sanhita Act comprehensively tackles a wide spectrum of issues, ranging from crimes against women to the menacing specter of terrorism.The Bill retains several parts of the IPC and changes include introduction of offences of organised crime and terrorism, enhancement in penalties for certain existing offences, and introduction of community service as a punishment for certain petty offences. The primary focus of this article will be to trace the major alterations brought forth by the Bhartiya Nyaya Sanhita Act, 2023. Through comprehensive analysis and recommendations, this paper aims to highlight the importance of bridging the gap between old provisions of Indian Penal Code and changes in the new lawto address key societal issues, thus rendering it a momentous undertaking in the realm of legal transformation

Introduction

The Indian Penal Code is the principal criminal code of India which was drafted by Thomas Babington Macaulay and was enacted in 1860. It containsover 511 sections that define crimes and their punishments.It was incorporated in Post-independence India. It has been amended several times over the years, most recently in 2013. But lately, it has been criticized for being outdated and for not reflecting the realities of modern India. As a result, there have been calls for the IPC to be amended to address these new challenges.

In a landmark move towards reforming India's legal and judicial landscape, the government enactedBharatiya Nyaya Sanhita Act, 2023. It aims to bring a comprehensive transformation in the way justice is administered, ensuring greater efficiency, transparency, and accessibility for all citizens. The key highlights of this Act are poised to reshape the Indian judicial system, making it more responsive to the needs of the people and aligning it with the demands of the modern world.This legislative proposition holds the intention to not only revoke but also supplant the IPC, presenting a substantial overhaul of India's criminal legal architecture. It introduces a spectrum of revisions to the existing legal clauses, particularly concerning domains such as defamation, offences against women, inclusion of organised crimes, Sedition and acts related to attempted suicide.

The difference between the two legal codes arises in their extent and purview. Whereas the Indian Penal Code comprises a total of 511 sections, the Bharatiya Nyaya Sanhita encompasses a consolidated count of 356 provisions. This Act has been streamlined to potentially reshape more targeted legal framework and to ensure a more

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effectivedispensation of justice.

2. Need to revamp indian penal code

With the recent development of law, Indian Penal law in India been amended broadly in year 2013 and 2018. Major provisions like that of adultery under section 497 and criminalisation of carnal intercourse against the order of nature under section 377 has been repealed following the judgement of Joseph Shine v. Union of India and NavtejJohar v. Union of India. So there has been a transformation in the law where it has changed the old age notions. But still, after all these major changes, Indian Penal Code lacks some aspects regarding offenses, which are not grave in nature. Sedition is the recent example of this aspect, it creates offenses which are still continuing from the colonial era, when British use to suppress the dissent. It has been used as a weapon in present days, against the protesters and those who raise questions and thereby displays its irreversible effect on modern democracy.iSome areas of law lack gender neutrality like kidnapping of child or procuration of child which needs to be addressed. The term 'rape' has been associated with women only as a victim and men as always offender. So rape laws in the code are gender specific keeping males and transgenders out of its purview. Moreover, there is no specific provision to deal with rape cases where women gives consent to sexual intercourse on pretence of marriage, job offers etc. It is still not illegal for husband to rape his wife and thus marital rape is not taken as a crime yet.iiAdultery law, though has been declared unconstitutional, scraping it does not put a female on equal footing of man as an abettor, it penalizes only men. There is no statutory provision to make age of marriage and age of consent uniform. So considering all these flaws there was a need to reform Indian Penal Code.

3. Key features of bharatiya nyaya sanhita, 2023

The Bharatiya Nyaya Sanhita, 2023which was introduced in Lok Sabha on August 11, 2023has been passed by the Parliament in the recently concluded winter session, following which presidential assent was received on December 25, 2023.The Act repeals the Indian Penal Code, 1860. The Indian penal code was the principal law on criminal offences. Various offences were categorised under different heads like human body such as assault and murder, property such as extortion and theft, public order such as unlawful assembly and rioting, public health, safety, decency, morality, and religion, defamation, and offences against the state and many more.

The BNS retains several parts of the IPC. Major Changes include introduction of offences of organised crime and terrorism, enhancement in penalties for certain existing offences, and introduction of community service as a punishment for certain petty offences. Certain offences under the IPC that have been struck down or read down by courts have been omitted. These include offences of adultery and same-sex intercourse (Section 377).Key changes proposed in the Bill include:

- **Revisiting of Sedition Law:** IPC defines seditioniii as bringing or attempting to bring hatred or contempt, or exciting disaffection towards the government. It is punishable with imprisonment term between three years and life imprisonment, and/or a fine. But the offence under Section 150 is headed as Acts endangering sovereignty unity and integrity of India when acts spark "secession or armed rebellion or subversive activities or encourages feelings of separatist activities or endangers sovereignty or unity and integrity of India."A comparative evaluation between the old and the new shows that Section 150 has included "electronic communication" and "use of financial means" as tools of perpetuating an act "endangering sovereignty unity and integrity of India". Punishment for the same has also been extended to 7 years or life imprisonment, and fine.This revised provision emphasizes the gravity of acts against the state and strengthens measures to safeguard the nation's interests..
- **Defining Terrorism:** A comprehensive definition of terrorism has been given under this bill. The Bill defines terrorism as an act that intends to threaten the unity, integrity, and security of the country, to

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intimidate the general public or disturb public order. Punishment for attempting or committing terrorism includesdeath or life imprisonment, where the offence has resulted in death of any person, or imprisonment term between five years and life in other cases. An offender will also be liable to a fine of at least five lakh rupees.This new definition has been inserted with intent to enhance clarity and precision in identifying and addressing acts of terrorism. In addition to this the bill also penalises conspiring, organising, or assisting in preparation of any terrorist act with an imprisonment term between five years and life imprisonment, and a fine of at least five lakh rupees.

- **Organised crime:** The Bill defines organised crime under section 109 as a continuing unlawful activity 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 benefit, and carried out by individuals acting singly or jointly, as members of or on behalf of a crime syndicate. Attempting or committing organised crime will be punishable withdeath or life imprisonment, where the offence results in death of any person, and imprisonment term between five years and life, in other cases. The offender will also be liable to pay a fine.Apart from this, even helping any person in committing such crime, or helping them hide after they have committed a crime, is also punishable with imprisonment ranging from five years to life. Even holding property derived from commission of an organised crime, such as buying a house with money earned from committing an organised crime, is punishable with life imprisonment.

- **Petty organised crime:** The Bill makes attempting or committing petty organised crime punishable with imprisonment between one and seven years, and a fine. Petty organised crimes are those which cause general feelings of insecurity among citizens, and are committed by organised criminal groups/gangs. These include organised pick pocketing, snatching, and theft.

- **Death penalty for gang rape of minor:** One of the notable changes under the Bill is that, a man may be sentenced to death for the rape of a girl younger than 12 years of age under clause 65(2). Moreover, where a girl below 18 years is gang-raped, the accused may be punished with life imprisonment or death. Currently, the IPC only provides for death only in cases of gang-rape where the girl was below 12 years. This proposition, however, does not alter the landscape significantly.The Protection of Children from Sexual Offences Act, 2012, also provides for the punishment of death only in cases of 'aggravated' sexual assault against all children, which includes rape of a child below 12 years of age.

- **Strengthening women's right:** The Bill penalises the act of sexual intercourse with a woman (not amounting to rape) through deceitful means or a promise of marriage without intending to fulfil it. It will be punishable with simple or rigorous imprisonment up to 10 years, and a fine.The BNS Bill recognizes the need to safeguard women from exploitation under false pretences such as marriage, job offers, or promotions. Such exploitation is now criminalized, reflecting a progressive stance toward women's rights and protection.

- **Gender neutral laws:** The laws on kidnapping of children, trafficking, employing or procuring minors to commit offences (including pornography) have been made gender neutral. Thus, these laws will now protect children of both genders, whereas in the IPC, these provisions only protect minor girls. Similarly, the language in the offences of assault and voyeurism has been changed so that persons of any gender may be charged with these offences. Besides the creation/deletion of offences, punishments have also been changed all together in the BNS.
- **Extending applicability of certain offences to boys:** Under the IPC, importing girls under the age of 21 years for illicit intercourse with another person is an offence. There is no provision punishing importing of boys. But, the BNS specifies that

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importing boys under the age of 18 years for illicit intercourse with another person will also be an offence.

- **Redefining Defamation:** The bill redefines the offence of defamation, altering the associated penalties. Under the BNS Bill, defamation carries a maximum sentence of two years' imprisonment, a fine, or community service. This reform emphasizes a balanced approach to protecting reputation while promoting proportionate punishment.

- **Combating Mob Lynching:** A significant addition to the bill is the introduction of capital punishment for the offence of mob lynching. Offenders can now face capital punishment or a prison term of seven years to life. This stern approach underscores the government's commitment to curb mob violence and protect the safety and dignity of citizens.Although not defined by either description in the BNS, it has been made punishable in clause 101(2) 'punishment for murder'. In particular, when "a group of five or more persons" together commits a murder based on grounds such as race, caste and 'any other ground' (religion is not specifically mentioned), they may be punished with imprisonment ranging from seven years to life, or with death. Punishment for 'just' murder is identical to section 302 of IPC. Unlike clause 101(2), 'just' murder is punishable only with life imprisonment or death.This provision is added with intent to combat racial and caste violence.

- **Adultery Decriminalized:** In alignment with a Supreme Court ruling, the BNS decriminalizes adultery by omitting the provision for this offence. The change reflects a modern and rights-based perspective on personal relationships and individual autonomy.

- **Inclusivity in Unnatural Sexual Offences:** The bill aligns with the Supreme Court's stance on LGBTQ+ rights by excluding punishment for unnatural sexual offences between consenting adults. This modification reflects a more inclusive and tolerant approach to personal choices and relationships.

- **Marital Rape Exception:**Despite various debates on the issue, the BNS Bill retains an exception to marital rape, similar to the previous legal framework. The bill continues to generate discussions around the need for comprehensive reform in addressing this sensitive matter. Though a statutory provision on uniformity of age of consent and age of marriage has been made to make rape of a girl below 18 years of age a crime, irrespective of her marital status and relationship with the accused.

- **Community service as punishment**:An important innovation in the Bill is the introduction of 'community service' as punishment. This punishment has been provided for 'petty' offences such as public servant engaging in unlawful trade, attempt to commit suicide with the intent to influence a public servant, theft of property which is lesser than Rs. 5,000, drunken misconduct, and defamation. It may be noted that no description or definition of community service is provided in the BNS.

- **Streamlined Legal Procedures to expedite the Judicial process**:The BNS introduces timebound procedures. A charge sheet must be filed within 90 days, with an additional 90 days permissible by court order. The investigation period is capped at 180 days, followed by a 30-day window for delivering a judgment after trial. These provisions emphasize the importance of swift justice delivery.

4. Challenges in implementation

- Bharatiya Nyaya Sanhita, 2023 presents a range of challenges that demand careful consideration and strategic approaches. It appears that the Act is broadly based on the same principles as the existing Code which is good as also natural. However, some of the new additions require a closer examinationboth in terms of phraseology as well as intent.

- It appears that some provisions have been poorly worded, while others have been confusingly included without any assessment of the need for such inclusion.These challenges encompass not only potential opposition and

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resistance but also legal complexities, practical hurdles, and the need to anticipate unforeseen consequences. To surmount these challenges and forge a successful path forward, a comprehensive strategy is imperative.

- **Sedition:**The language used for the offence is not clear and unambiguous. Notably, the draft provision adds "indulges in or commits any such act", leaving a greater discretion with law enforcement agencies to decide what can be brought within the fold of an act "endangering sovereignty unity and integrity of India" for the purposes of slapping the charges.

- **Community service:** The Act misses in prescribing exactly what constitutes community service. In absence of any such prescription the possibility of controversies arises.As there have been stray cases where peculiar kinds of community service exampledirection to distribute copies of Quran, donation of money to gaushala or direction to serve at a temple have been ordered. Such kind of directions having religious connotations or furthering patriarchal normscannot be ignored.

- **Organised crimes:** As clause 109 of the BNS penalises a variety of crimes under the heading"organised crimes". Though its closer scrutiny reveals that its definition is much wider and ambiguous. Phrases such as land grabbing, cyber crimes having severe consequences, economic offences have been used in a very unclear and loose manner.

- **Petty organised crimes:**Clause 110 of the BNS is supposed to penalise "petty organised crime". The definition starts with the phrase "any crime that causes general feelings of insecurity among citizens relating to…". But, prescribing higher punishment for an offence merely because it causes "general feelings of insecurity" among citizens is problematic.The difference in punishment, then, is not because of any difference in the act, but simply because of a difference in perception of the act by the citizenry.

- **Adapting to Unforeseen Consequences**:Change, especially at the legislative level, can bring about unforeseen consequences or implications. These might necessitate subsequent amendments or modifications to the bills. To effectively handle such scenarios, a proactive approach to ongoing evaluation is crucial. Instituting periodic assessments and reviews can help identify any emerging gaps or glitches and enable swift corrective action. This iterative approach ensures that the legislation remains responsive to evolving realities.

4. Conclusion

In conclusion, the journey of transforming old legislation with new legislation is riddled with challenges, but each challenge can be transformed into an opportunity for growth. By addressing stakeholder concerns, securing legislative support, strategizing implementation, and proactively addressing unforeseen consequences, a pathway to success can be charted. Through concerted efforts, it can not only overcome obstacles but also flourish as instrument of positive change.But still no provision in this Act has been made regarding marital rape, misuse of section 498A cruelty by husband or in laws, rape of men, sexual harassment of men etc. In summation, the emergence of the Bharatiya Nyaya Sanhita, 2023 signifies a substantial stride towards contemporizing and adapting India's criminal legal structure to the modern requisites and societal values of the nation. The proposed revisions and amalgamations within the BNS underscore an evolution in legal thought while addressing pivotal societal issues, thus rendering it a momentous undertaking in the realm of legal transformation.Overall, the proposed law is a much awaited reform, but in order to justify the title, we need to introduce tenets of restorative justice in our criminal justice system.

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